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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No.

RALPH LACHMAN, et al,
IRVING KIPNIS, et al,
TEDLAND REALTY CORP.,
HARRY KLUBECH, et al,
RALJEAN, INC.,
MIRRIS FOX, et al,
NAT TELLER, et al,
ISADORE EVANS, et al,
K. CHAACHOU,
JESSIE S. REID, a widow,

Appellants,

vs.

THE CITY OF MIAMI BEACH, A MUNICIPALITY CREATED AND EXISTING UNDER THE LAWS OF THE STATE OF FLORIDA,

Appellee.

Appeal from the Supreme Court of the State of Florida

STATEMENT AS TO JURISDICTION

Appellants having this day filed in this court the record brought up by appeal, now file this their statement as to jurisdiction, being a statement on the basis of which they contend that the Supreme Court of the United States has jurisdiction to review the judgments in question and to exercise such jurisdiction in this case.

1. JURISDICTIONAL STATEMENT UNDER RULE 15

(a) **Reference to the opinions delivered in the courts below.**

This appeal is prosecuted from a judgment of the Supreme Court of the State of Florida, reported as City of Miami Beach v. Ralph Lachman, et al. (December 11, 1953), 71 So. 2d 148 (rehearing denied April 9, 1954).

The per curiam opinion of the Supreme Court of Florida, together with opinions concurring in part and dissenting in part, reprinted in full, are annexed hereto as "Appendix A".

The lower court, the Circuit Court of Dade County, Florida, filed and recorded its final decree on January 3, 1953, recorded in Chancery Order Book 1062, page 114. The final decree and opinion in full of J. Fritz Gordon, Circuit Judge of Dade County, Florida, is unreported but annexed hereto as "Appendix B".

(b) **Statement of the grounds on which the jurisdiction of this court is invoked.**

(i) The issues in this case were presented to the state court by bills of complaint filed separately by the ten appellants in the Circuit Court of Dade County, Florida, which were heard and decided together by the said court. The consolidated suits were brought to restrict the City of Miami Beach from enforcing a zoning ordinance of the City limiting the use of the property of the appellants to single family residences constructed on 40,000 square foot plots. The Circuit Court of Dade County, Flor-

ida, by J. Fritz Gordon, J., found that the subject ordinance as it applied to the subject properties was "arbitrary, unreasonable, oppressive, discriminatory, and confiscatory, . . " and entered judgment for the present appellants, from which the City of Miami Beach appealed.

The Supreme Court of the State of Florida followed the rule in *Euclid v. Ambler*, 272 U. S. 365 (1926) and held that "An ordinance may be said to be fairly debatable when for any reason it is open to dispute or controversy", that the record contained a "fairly debatable" question as to zoning, and that the court would not substitute its judgment for that of the zoning board of the City, and further, denied a petition for rehearing on April 9, 1954.

The complaints sought a declaration that the zoning ordinance was unconstitutional, and requested a permanent injunction restricting the City from enforcing it. This was done under the general equity powers of the Circuit Court which is given jurisdiction to handle such matters by 6 F. S. A. 87:01 - 87:13 as to declaratory judgments, and by 5 F. S. A. 64:01 - 64:15 as to injunctions.

(ii) The judgments sought to be reviewed are the per curiam opinion and mandate of the Supreme Court of the State of Florida, filed and entered the 11th day of December, 1953, together with the concurring opinion and opinion concurring in part and dissenting in part, and the order and mandate denying the petition for a rehearing filed and recorded the 9th day of April, 1954. A copy of one of the identical orders and mandates appealed from is annexed hereto as "Appendix C".

The notice of appeal, the petition for appeal, and the

assignments of error were filed in the Supreme Court of Florida, on June 1, 1954, and the order of the Supreme Court of Florida allowing the appeal was filed and recorded on June 2, 1954.

(iii) The statutory provision believed to confer on this court jurisdiction of the appeal is Title 28 U.S.C. Sec. 1257. This appeal is prosecuted from a judgment of the Supreme Court of the State of Florida, which is the highest court of the State of Florida in which a decision in the within matter can be had. There is drawn into question the validity of a zoning ordinance of the City of Miami Beach, Florida, on the ground that, on its face and as construed, it is repugnant to the Fourteenth Amendment to the Constitution of the United States. The decision of the Supreme Court of Florida was in favor of the validity of said ordinance. This Court has jurisdiction on appeal to review the final judgment in question by virtue of the express provision set forth in Title 28, U.S.C. Sec. 1257.

(iv) **Cases Believed To Sustain the Jurisdiction.**

As to due process:

Pennsylvania Coal Co. v. Mahon, 260 U. S. 393 (1922);

Nectow v. Cambridge, 277 U. S. 183 (1928);

Liggett v. Baldrige, 278 U. S. 105, 111, 112 (1928);

Euclid v. Ambler Realty Co., 272 U. S., 365 (1926).

As to equal protection:

Truax v. Corrigan, 257 U. S. 312, 332-333 (1921);

Hartford Steam Boiler Inspection & Insurance Co. v. Harrison, 301 U. S. 459 (1937);

Smith v. Calhoon, 283 U. S. 553 (1931);

Mayflower v. Ten Eyck, 297 U. S. 266 (1936).

(v) **The Statute Involved.**

Pursuant to the general authority granted by Chapter 9837, Number 719, Special Laws of Florida, 1923, which has since, as amended, become Chapter 176 of the Florida Statutes Annotated, the City of Miami Beach, Florida, on December 3, 1930, enacted Ordinance Number 289, known as the "Zoning Ordinance of the City of Miami Beach, Florida". Up to the time of the commencement of this action the ordinance had been amended 173 times, and as of April 8, 1953, had been amended 191 times.

The ordinance as applicable to this case, consists of thirteen printed pages. In place of including the entire ordinance at this point, it is annexed hereto in full as "Appendix D", and, for the convenience of the court, the material portions of the ordinance are summarized briefly as follows:

In Section 2 of the ordinance, the City of Miami Beach is divided into use and area districts, one of which is the RAA estate district. In Section 3, it is provided that no building shall be constructed in the RAA district to be occupied or used for any purpose other than a single family residence. In Section 15, the use districts are designated, and it is provided that every building constructed in the RAA estate district shall be built on a lot area of not less than 40,000 square feet.

The property of the appellants is all located in area district No. 4 and area district No. 5. In Section 16, which

designates the area districts and provides regulations for them, a front yard of not less than 65 feet, a rear yard of not less than 10 feet, and a side yard of not less than 5 feet is required for District No. 4, and a front yard of not less than 40 feet, a rear yard of not less than 10 feet, and a side yard of not less than 5 feet is required for area district No. 5.

The above summary of the applicable portions of the ordinance shows clearly that the appellants are restricted in the use of their property to an RAA estate district, 40,000 square foot area per single family dwelling with onerous yard requirements.

The court has before it the entire ordinance as "Appendix D" annexed hereto.

(c) (1) **Short Statement of the Questions Presented by the Appeal.**

QUESTION I: IS NOT THE PORTION OF ZONING ORDINANCE NO. 289 LIMITING THE APPELLANTS TO THE CONSTRUCTION OF A SINGLE FAMILY DWELLING ON A 40,000 SQUARE FOOT PLOT AN ARBITRARY AND UNREASONABLE RESTRICTION BEARING NO SUBSTANTIAL RELATION TO THE PUBLIC HEALTH, SAFETY, OR GENERAL WELFARE, AND THEREFORE, AN INVALID EXERCISE OF POLICE POWER VIOLATING THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT?

QUESTION II: IS NOT THE PORTION OF ZONING ORDINANCE NO. 289 LIMITING THE APPELLANTS TO THE CONSTRUCTION OF A SINGLE FAMILY DWELLING ON A 40,000 SQUARE FOOT PLOT AN ARBITRARY AND UNREASONABLE RESTRICTION CONSTITUTING DISCRIMINATING AND PARTIAL LEGISLATION IN FAVOR OF PARTICULAR PERSONS AS AGAINST OTHERS IN LIKE CONDITION AND CREATING AN ARBITRARY LEGISLATIVE CLASSIFICATION WITHOUT REASONABLE BASIS, AND THEREFORE, AN INVALID EXERCISE OF POLICE POWER VIOLATING THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT?

(d) **Statement of the case containing the facts material to the consideration of the questions presented and showing that the rulings of the court below are such as to support the assertion that the case is within the statutory provision believed to confer jurisdiction on this court.**

In summary, the federal questions were raised and the validity of the state statute "drawn in question" in the complaints. The federal questions were raised in and passed upon by the trial court, which held the ordinance to be unconstitutional. They were considered and passed upon by the Supreme Court of Florida, which held the ordinance to be valid. They were reasserted with exact particularity of language in the petition for rehearing.

The details of the foregoing summary are as follows:

The action was initiated by bills of complaint filed separately by the appellants in the Circuit Court of Dade County, Florida. The cases were tried and decided together by said court. The complaints on which the cases were tried as a consolidated trial, sought a declaration that the portion of Zoning Ordinance No. 289 known as "Zoning Ordinance of the City of Miami Beach, Florida", which restricts the use of appellants' property to the RAA estate district and to the construction of a single family, single dwelling on a 40,000 square foot plot is unconstitutional. The complaints raised the federal questions as to whether this portion of the ordinance violated the due process and equal protection clauses of the Fourteenth Amendment. The complaints accomplished this by alleging a state of facts which, if true, would clearly render the applicable portions of the ordinance both confiscatory under the due process clause and discriminatory under the equal protection clause. The complaints, particularly in Paragraph X and XII thereof, attacked those portions of the ordinance as arbitrary, unreasonable, and unconstitutional, and as having no relation to "public safety, welfare, or morals". In the prayer for relief the complaints sought a declaration that the ordinance is unreasonable, arbitrary, confiscatory, and unconstitutional, and requested the court permanently to enjoin the City of Miami Beach from enforcing the ordinance against the property of the appellants.

The Circuit Court, after a lengthy trial, found that "the plaintiffs have fully and clearly established and maintained the allegations contained in the bill of complaint as amended by sufficient and convincing evidence". The trial judge further found that "Ordinance No. 289 as it affects the subject properties is arbitrary, unreasonable, and unconstitutional."

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The City of Miami Beach appealed to the Supreme Court of Florida, and the latter reversed the trial court. (City of Miami Beach v. Lachman, et al, Dec. 11, 1953, 71 So. 2d 148).

In its Per Curiam opinion the court considered the federal questions as raised and decided them adversely to the appellants herein. The court said at page 149:

> "The primary question for determination is whether or not the plaintiff sustained the burden of showing that Zoning Ordinance 289 is unreasonable and not fairly debatable as applied to the properties of the plaintiff."

After stating the facts, the court went on to say, at page 150, that the effect of the trial court's ruling was to hold that the ordinance was unreasonable and not "fairly debatable". The court then went on, at page 150, to discuss *Euclid v. Ambler Realty Co.*, 272 U. S. 365, (1926) in which this court established the "fairly debatable" doctrine in considering whether or not an ordinance was valid. The court went on to state that zoning boards are in the same category as all other administrative boards, and said, at page 150:

> "Their ordinances and regulations will be given serious consideration and their judgments great weight, but where it is conclusively shown that they deprive one of his property without due process or otherwise infringe on State or Federal constitutional guarantees unreasonably, such ordinances and regulations cannot be said to be reasonably debatable and will be stricken down."

The court went on to state that it understood that the doctrine of Marbury vs. Madison I Cranch (U. S.) 137, 2 L. Ed. 60, was applicable and applies with equal force against a zoning ordinance. The court, at page 151, sought to distinguish the *City of Miami Beach v. First Trust Company*, (Fla.) 45, So. (2d) 681, 1950, popularly known as the "Firestone" case. In that case, the Supreme Court of Florida struck down as unconstitutional the same provisions of the same Zoning Ordinance No. 289 here attacked. The subject matter of the "Firestone" case was an estate approximately 1000 feet south of one of the lots affected by the case at bar. But the Court sought to distinguish the Firestone case and said that in the instant case there were factors which made up a "fairly debatable" issue, and said at page 152:

> "Some of the results contended for in this paragraph we do not think of consequence and could be compensated for, but some of them raise serious policy, economic and administrative questions that place it within the 'fairly debatable' doctrine."

At page 152, the Court states that there is already an undue preponderance of land in the City of Miami Beach zoned for hotel and apartment use, and at present there is no need for more; that the economic welfare of the City is almost entirely dependent on the prosperity of the hotel and apartment house business, and that the economic history of that business and the City of Miami Beach has demonstrated that the construction of other new and modern hotels to the north would so reduce the patronage of those already in use that they would become so needless and unpopular as to raise the danger of creating a blighted area; that the eighty-six lots in question are the only lands

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in the City that are available to the public where the view to the ocean is unobstructed.

The court held that, the application being on behalf of ten separate tracts scattered through a total of eighty-six lots affected by the portion of the zoning ordinance in question, granting relief would constitute sweeping rezoning for the entire district and "would jeopardize and materially affect the entire comprehensive zoning plan of the City".

The Court found that all these factors made the necessity for the ordinance "fairly debatable", and passed squarely on the constitutional issue by saying at page 152:

> "These are matters for the City to settle and adjust and when they enter the picture the Court should not invade the City's authority, absent a paramount constitutional right which is not shown in this case."

The Court reaches its final conclusion on page 153 by saying:

> "We think the first question was fairly debatable and that the decree of the chancellor should be reversed."

A reading of the opinion of the Supreme Court of Florida makes it clear that that court considered and disposed adversely of the federal questions raised in the complaint by applying the rule laid down by this court in *Euclid v. Ambler*, 272 U. S. 365, (1926).

The opinion of the Supreme Court of the State of Florida thus construed the ordinance to be valid and to have valid application to the property of the appellants.

Following this "surprise decision", the contention that the ordinance violates the due process and equal protection clauses of the Fourteenth Amendment was also reasserted in specific language in the petition for rehearing. Particularly in Paragraphs II, IJI, IV, V, VI, VIII, XIII, XVIII, and XX, the petition for rehearing advances the claim that the ordinance is unconstitutional. Precise language is used in Paragraph XVIII of the petition for rehearing as follows:

> "In considering these matters, your Honors COMPLETELY OVERLOOKED THE FACT THAT SUCH DISCRIMINATION AND CONFISCATION AMOUNT TO A DENIAL OF EQUAL PROTECTION AND TAKING WITHOUT DUE PROCESS OF LAW IN VIOLATION OF THE 14th AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES."

The petition for rehearing was filed on December 24, 1953.

The Supreme Court, without further opinion, denied the petition for rehearing on April 9, 1954.

(e) Statement of the grounds upon which it is contended that the questions involved are substantial and the authorities relevant thereto.

The ordinance as applied to the property of the appellants has the effect of depriving the appellants of prop-

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erty without due process of law. There is no evidence whatsoever in the record to show that the ordinance is any longer necessary for the public safety, health, morals, or general welfare of the City of Miami Beach; and on the contrary, these appellants by an overwhelming preponderance of the evidence sustained the burden in the court below that as applied to their property, Ordinance No. 289 was clearly arbitrary and unreasonable, and had no substantial relation to the public health, safety, or general welfare.

Similarly, the ordinance violates the equal protection clause as it effects unlawful discrimination against the appellants as compared to other property holders. In fact, the owners of the eighty-six lots comprising the strip zoned as RAA, including the appellants, are the only property owners in the entire City of Miami Beach restricted to the construction of a single family dwelling on a 40,000 square foot lot.

I. ARGUMENT — Statement of Facts

Zoning Ordinance 289 of the City of Miami Beach, Florida, places the property of the appellants in a use district known as RAA Estate District. The ordinance requires that in such a district construction be limited to a single family dwelling on a 40,000 square foot lot area.

The trial court found that relaxing the ordinance would not adversely affect the public health, safety, or welfare, and that as applied to the property of the appellants it was arbitrary, unreasonable, and unconstitutional. This judicial finding was soundly based on the evidence before the court.

The undisputed facts are that the property of the appellants is interspersed among eighty-six lots in a narrow strip of ocean frontage about two miles long bound on both the north and south by luxury hotels and apartments, on the west by a heavily travelled state highway, and on the east by the Atlantic Ocean. It is also undisputed that condemnation proceedings by the City to convert two separate portions of the strip into public parks were pending at the time of the trial.

The appellants in their direct case offered the testimony of several experts who testified to the effect that the ordinance no longer had any relation to public health, safety, and welfare, and that permitting other uses, instead of adversely affecting the public interest, might be of benefit to the City of Miami Beach.

Other witnesses for the appellants testified that there were thirty-one homes in this strip, but only seven of them have been built since 1935, and there is little if any market for these homes either for rent or for sale as private residences; that there are only a very few families in the United States with sufficient resources to keep up a home of the size required.

Another witness for the appellants, Irving Kipnis, testified that the taxes on the home he owns (on one of the plots which are the subject matter of the litigation) are over $8,000.00 per year. The insurance and depreciation, he testified, amount to approximately $7,000.00 per year, so that the total amount of taxes, insurance, and depreciation is around $15,000 a year. Mr. Kipnis testified further that he had to rent his home, and that the maximum rent he could get out of the property was $7200.00

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a year, less than half of the approximately aggregate amount of taxes, insurance, and depreciation.

Witnesses for the appellants also testified that while the development of the entire City of Miami Beach had been phenomenal, and the rest of its ocean front has been built up, the strip of eighty-six lots of which the property of the appellants is a part, has been in a state of arrested development. Testimony for the appellants was also to the effect that there are only a few families in the United States of America with sufficient fortune to keep up a home of the size required to be built on the property of the appellants.

One of the experts for the appellants testified that if the property were rezoned to multiple family use the present value of all the lots involved would increase from $840,000 to a value as rezoned of $4,350,000. Expert witnesses also testified that the property was no longer suitable for residential purposes.

The action as stated in the prayer for relief in the bill of complaint was an action for a declaration that the ordinance was unreasonable, arbitrary, confiscatory, and unconstitutional, and for a permanent injuction restraining the City of Miami Beach from enforcing the ordinance against the property of the appellants. The appellees however treated the trial as if it were an application to build luxury hotels on the property of the appellants.

The appellees rested their entire case on the contention that rezoning the property of the appellants for hotel and apartment use would create unwarranted competition for the already existing hotels and apartment houses.

The City offered expert testimony that the land was ideally suited to single family estates; that there is already an undue preponderance of land zoned for hotel and apartment use, and that making other lands available for that purpose would damage the value of the present hotels and apartment houses; and that the economic welfare of the City is dependent upon the hotel and apartment house business.

Witnesses for the City further testified that the property of the appellants is interspersed among eighty-six lots subject to the RAA classification, and that these eighty-six lots are the only ones available to the public where the ocean is unobstructed. Experts for the City also testified that rezoning for hotels and apartments would aggravate the traffic problem, result in increase of fire and other hazards, overtax the sewer, water, and fire fighting facilities, and thus endanger the public health and safety. The appellants countered the latter point by showing that the increased taxes would greatly more than compensate for the additional municipal services which might have to be supplied if the property of the appellants were rezoned.

It is to be noted that all this testimony is directed toward proving that more hotels and apartment houses built on the eighty-six lots might be detrimental to the welfare of the City.

None of the City's evidence proves in the slightest degree that the stringent and onerous 40,000 square foot restriction is in any way necessary to the public health, safety, or general welfare. In short, there is nothing in the record to show that the effectiveness of the zoning plan requires the retention of the RAA classification. On the

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record, retention of the RAA classification is not debatable at all, much less "fairly debatable".

As to the contention of the City that more hotels would create competition and have an adverse affect on the business of the existing hotels, one of their own expert witnesses, Reinhold P. Wolff, stated "The economic purpose of zoning is not to encourage or discourage competition", a succint and accurate statement of the law which could not be better stated by counsel for the appellants. The appellees also offered the testimony of certain hotel owners to the general effect that the hotel business was best in 1947 and had been declining ever since, with few exceptions.

A reading of the record, therefore, would demonstrate clearly that there is literally no evidence to show any substantial relation to the public health, safety, or general welfare of the application of the zoning ordinance in its present form to the property of the appellants.

On the other hand, the appellants showed beyond "fair debate" that their property was no longer suitable for large private estates and that there was no market for these properties, either for rent or sale on a sound economic basis. They also showed that the property could not be used by them personally for the purpose for which it was zoned.

There is thus no room for reasonable debate that the restriction of appellants' property to RAA use is essentially arbitrary and unreasonable.

The appellants therefore sustained the burden of proof placed on them to show that the 40,000 square foot restric-

tion is arbitrary and unreasonable, and bears no substantial relation to public health, safety, or general welfare.

It is an undisputed fact, established by a mere reading of the ordinance, that the appellants and the owners of the rest of the eighty-six lots subject to the RAA 40,000 square foot restriction are the only property owners in the City of Miami Beach so discriminated against. In sustaining the burden of showing that the restriction is arbitrary and unreasonable, the appellants also proved that the discrimination against them, being unnecessary, was and is a legislative classification without validity, subjecting the appellants to "hostile discrimination and the oppression of inequality" while at the same time making the other property owners the recipients of undue favor and granting them class benefits arbitrarily withheld from the appellants.

The appellants therefore also sustained the burden of proof placed on them to show that the 40,000 square foot restriction constitutes "discriminating and partial legislation in favor of particular persons as against others in like condition."

Upon such a state of facts the law is clear.

II. Discussion of Applicable law.

A. The ordinance violates the due process clause.

The police power is not absolute. *Hurtado v. California*, 110 U. S. 516 (1884). It embraces no more than the power to promote public health, morals, and safety. *Mugler v. Kansas*, 123 U. S. 623, 661 (1887).

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It is equally well settled that the states, in exercising their police power to promote and protect public health, morals, and safety, can employ only such means as do not unreasonably and arbitrarily interfere with fundamental natural rights of liberty and property. The means employed can be neither arbitrary or oppressive and must bear a real and substantial relation to the public health, safety, morals, or some other phase of the general welfare. *Lawton v. Steele*, 152 U. S. 133 (1894); *Welch v. Swasey*, 214 U. S. 91 (1909); *Pennsylvania Coal Co v. Mahon*, 260 U. S. 393 (1922); *Zahn v. Board of Public Works*, 274 U. S. 325 (1927); *Nectow v. Cambridge*, 277 U. S. 183 (1928); *Liggett v. Baldrige*, 278 U. S. 105, 111, 112 (1928); *Treigle v. Acme*, 297 U. S. 189, 197 (1936).

Zoning ordinances are in the same category as all other administrative ordinances, and when they have no substantial relation to the public health, safety, or general welfare, they are arbitrary, unreasonable, and unconstitutional. This was stated by the court below in the very judgment appealed from, *City of Miami Beach, etc. v. Lachman, et al*, 71 So. 2d 148 (1954), and in *Nectow v. Cambridge*, 277 U. S. 183 (1928).

The main question in the case, therefore, is whether or not the appellants sustained the burden of proving that the restriction limiting the use of their property to a single family dwelling on a 40,000 square foot plot was arbitrary and unreasonable and bore no substantial relation to the public health, safety, or general welfare.

The above statement of facts, which is derived from and sustained by the record, warrants an affirmative answer and a holding that the ordinance is unconstitutional

as violating the due process and equal protection clauses of the Fourteenth Amendment.

The appellants showed beyond "fair debate" that their property cannot be used for large private estates and that there is no market for their properties either for rent or sale on a sound economic basis.

On the other hand, the City offered no persuasive evidence to show that the public health, safety, or general welfare required the stringent and onerous 40,000 square foot restriction.

The evidence offered by the City was all directed to showing that building *more hotels and apartments* would aggravate the traffic problem, destroy the value of hotels and apartments now in existence, result in obstructing a view of the ocean, increase the fire and other hazards, and overtax the sewer, water, and fire-fighting facilities, thus endangering public health and safety.

But the issue in the case was not whether more hotels and apartments would be good or bad for Miami Beach. The only issue in the case was whether or not the public health, safety, or general welfare required the burdensome and arbitrary 40,000 square foot RAA restriction.

The Supreme Court of Florida was led into its error by the City's method of presentation of its case. The Supreme Court of Florida decided that the ordinance was "fairly debatable" because *rezoning for hotels and apartment houses* would bring about the evils that the City contended would ensue from such a move. The court also rested its decision on the ground that the amount of property

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involved is so large that to change its classification *to permit hotels and apartment houses* would necessarily affect the general zoning plan of the city, and held that whether or not the whole zoning plan should be modified is a matter which is "fairly debatable".

The Florida court thus rejected the contention that the ordinance deprived the appellants of property without due process and "otherwise infringed on constitutional guarantees unreasonably", and followed the rule laid down by this court in *Euclid v. Ambler Realty Co.*, 272 U. S. 365 (1926) by holding that the advisability of *rezoning for hotels and apartments* was a "fairly debatable" matter to be left to the judgment of the City Council. But the case at bar is distinguishable from the *Euclid* case in that the only issue in the case, namely, the question of whether or not the stringent 40,000 square foot restriction is or is not necessary to the welfare of the City of Miami Beach, is not a "fairly debatable" issue, as there is no evidence in the record to show any necessity for so drastic a restriction. On the contrary, the case should be governed by the *dicta* in the *Euclid* case to the effect that if zoning ordinances are arbitrary and unreasonable and have no substantial relation to the public safety they should be held to be unconstitutional.

The case falls clearly within the ruling in *Nectow v. City of Cambridge*, 277 U. S. 183 (1928). In that case, this court held that a zoning ordinance in the City of Cambridge, Massachusetts, as applied to the property of the plaintiff was a violation of the due process clause of the Fourteenth Amendment. Mr. Justice Sutherland said, at page 188: "The governmental power to interfere by zoning regulations with the general rights of the land owner by

restricting the character of his use is not unlimited, and other questions aside, such restriction cannot be imposed if it does not bear a substantial relation to the public health, safety, morals, or general welfare".

A complete taking of property is not necessary to bring a case within the proscription of the due process clause of the Fourteenth Amendment. A serious interruption to the common and necessary use of property is a taking, bringing it under the protection of the constitutional provisions. *Pumpelly v. Green Bay & Mississippi Canal Co.*, 80 U. S. 166 (1872), 13 Wallace 166; *Pennsylvania Coal Company v. Mahon*, 260 U. S. 393 (1922).

The court below had not only the power but also the duty, in the instant case, to substitute its judgment for that of the City Council of the City of Miami Beach, and its failure to do so in itself constituted a violation of due process of law. *Ohio Valley Water Company v. Ben Avon Borough*, 253 U. S. 287 (1920); *Lawton v. Steele*, 152 U. S. 133 (1894).

In summary, the ordinance violates the due process clause in that the provision for a single family dwelling on a 40,000 square foot plot is an onerous and stringent restriction which is not necessary to the welfare of the city and which does and will work undue hardship upon the appellants to an extent tantamount to a taking of property witout due process of law. The ordinance is therefore arbitrary and unreasonable, and hence an invalid exercise of the police power.

B. **The ordinance violates the equal protection clause.**

The equal protection clause prohibits "discriminating and partial legislation in favor of particular persons as

against others in like condition". *Minneapolis & St. L. R. Co. v. Beckwith*, 129 U. S. 26, 28, 29 (1889).

The prohibition is upon any "agency of the state" and hence applies to the City Council of the City of Miami Beach. *Virginia v. Rives*, 100 U. S. 313, 318 (1880); *Shelley v. Kraemer*, 334 U. S. 1, 20 (1948). It is well settled that equal protection of the laws means the protection of equal laws. *Yick Wo v. Hopkins*, 118 U. S. 356, 369 (1886). While equal protection does not require identical treatment, it does forbid unreasonable discrimination and protects all persons equally in their right to enjoy property so that no greater restriction should be placed upon one than another in the same condition. *Barbier v. Connolly*, 113 U. S. 27, 31 (1885). The constitutional concept of equal protection arose because "The guaranty was aimed at undue favor and individual or class privilege, on the one hand, and at hostile discrimination or the oppression of inequality on the other." *Truax v. Corrigan*, 257 U. S. 312, 332-333 (1921).

It is true that the legislature is allowed wide discrimination in the selection of classes. *Barrett v. Indiana*, 229 U. S. 26 (1913). The classification is valid if it has a reasonable basis. *Watson v. Maryland*, 218 U. S. 173 (1910). To be invalid, the classification must be clearly and actually arbitrary. *Smith v. Cahoon*, 283 U. S. 553, 566-567 (1931). There is a strong presumption that a classification is based on adequate grounds. *Madden v. Kentucky*, 309 U. S. 83 (1940).

But, in the instant case, the appellants have proved beyond dispute that the classification complained of effects, as to them, the discrimination and oppression of inequality,

while granting undue favor and class privilege to other owners not so restricted. The appellants have proved, therefore, that the City Council has abused its discretion, has failed to base its police statute on reason, and has refused to modify an ordinance which is now clearly and actually arbitrary, and not merely possibly so. The strong presumption in favor of the legislation has been adequately rebutted.

While the equal protection clause was not designed to interfere unduly with the police power of the state, it repeatedly has been held a limitation upon such power when the restriction, as in the instant case, is both unnecessary and inequitable. The unlawful discrimination against the appellants is plainly analogous to those cases in which the police power was held to be a violation of the equal protection clause. Such cases among others are the following:

The case in which a statute prohibiting stock insurance companies to have salaried employees as agents, but allowing mutual companies to do so was held to be an improper exercise of the police power. *Hartford Steam Boiler Inspection & Insurance Co. v. Harrison*, 301 U. S. 459 (1937). In another case, a law which required private motor vehicle carriers to obtain certificates of convenience and necessity and to furnish security for the protection of the public was held to be an invalid exercise of the police power because it exempted carriers of fish, farm, and dairy products, *Smith v. Cahoon*, 283 U. S. 553 (1931). In a third case this court held that a statute which gave to certain milk dealers, who entered the business before a specified date, the benefit of a price differential not allowed to those who commenced operations after that date was discriminatory, aribtrary, and unlawful, *Mayflower v. Ten Eyck*, 297 U. S. 266 (1936).

The owners of the eighty-six lots covered by the 40,000 square foot restriction, which includes the appellants, are the *only persons* and the *only owners of property* in the City of Miami Beach subject to this invidious discrimination. While it is well recognized that the law does not require identical treatment for all owners, the discrimination in the instant case is completely without basis in reason and is purely arbitrary. The zoning regulations contain far more favorable provisions benefitting the property owners immediately north and immediately south of the two mile strip affected by the present litigation. Hence they are the recipients of the undue favor, and the individual and class privilege forbidden by the *Truax* case and by the equal protection clause. On the other hand, the appellants are subject to the hostile discrimination and the oppression of inequality also forbidden by the *Truax* case and by the equal protection clause.

The single family dwelling, 40,000 square foot restriction is not necessary to the public safety, health, or general welfare of the City of Miami Beach. It is therefore clearly and actually arbitrary and unreasonable. It is a legislative classification without validity, and hence violates the equal protection clause.

C. Invalidity is not Cured by Multiplicity.

The substantial nature of the questions here presented is emphasized by the unusual manner in which the court below in *City of Miami Beach v. Lachman*, 71 So. 2d 148, reached its decision. In deciding as it did, the Florida Supreme Court refused to follow its own completely applicable precedent and sought instead to distinguish that precedent on a completely untenable ground. Only a few years be-

fore, namely, in April, 1950, the Florida Supreme Court had before it the case of *City of Miami Beach v. First Trust Company*, 45 So. 2d 681. This case is popularly known as the "Firestone case", and involved a little over eight acres with seven hundred feet on the ocean front, which up to that time had been restricted to the RAA use here complained of, and was part of the same area district in which the property of the appellants is still placed, and was subject to all the restrictions here complained of. In fact, the property involved is only about 1000 feet from the property of one of the appellants herein, Ralph Lachman, which will adjoin the proposed public park on the north boundary of the park. On this substantially identical set of facts, on rehearing, the court reversed itself, confessed to error, and held that due to numerous physical, economic, and social changes, the RAA restriction as applied to the Firestone Estate had become unnecessary to the general welfare, and hence invalid. It is to be noted also that in the Firestone case there was a natural boundary on the south of the Firestone estate; namely, one of the main highways of Miami Beach, known as "A1A". In spite of this natural barrier to a change of zoning, the decision passed over it and added the Firestone estate to the zoning classification of the property south of "A1A". Certainly with a main highway, there is more reason to limit a zoning district than a public park which in itself makes the property adjacent less desirable as private estates.

Nevertheless, in the case at bar the lower court, after discussing the Firestone case said that the sweeping rezoning sought in connection with the property of the appellants would jeopardize the entire comprehensive zoning plan of the City. Hence, reasoned the court, the necessity of the ordinance in its application in this case was "fairly

debatable", and following the rule of *Euclid v. Ambler*, 272 U. S. 365 (1926), would be upheld.

The error is patent.

In so holding, the lower court overlooked the fact that there were ten appellants, each owning an isolated parcel of land, but each seeking the same relief sought by the owners in the Firestone case. The cases of the appellants were consolidated for the convenience of the Florida Supreme Court by its order. The lower court held, in effect, therefore that the right of each appellant to be safeguarded from confiscation or discrimination can be destroyed by the mere procedural mechanics of consolidation.

Of course, if the ordinance is invalid as to the property of one of the appellants, it is invalid as to all of the lots zoned within the area district and restricted to an RAA classification. Each individual appellant has constitutional rights which are equally valid whether dealt with collectively or singly.

Invalidity can not be cured by multiplicity.

D. **The questions are substantial.**

For all of the reasons contained in the foregoing argument, statement of facts and discussion of the applicable cases, the federal questions here presented were, at the time of the granting of the appeal by the court below, and are now substantial in character.

The case is distinguishable from *Zucht v. King*, 260 U. S. 174 (1922) on several grounds. In the first place,

Zoning Ordinance 289 exceeds a reasonable exercise of police power and hence is invalid and was proved to be unreasonable and arbitrary by these appellants in the trial court.

Secondly, the question here goes directly to the validity of the ordinance, and not to the validity of the authority of the officials as in the *Zucht* case.

Third, there are a number of decisions of this court, cited above, which uphold the position of the appellants in respect to the due process of law question.

Fourth, and similarly, there are decisions of this court, cited above, which hold that a comparable invalid classification is a violation of the equal protection clause.

Some of the language in *Milheim et al v. Moffat Tunnel Improvement District, et al,* 262 U. S. 710 (1923) is peculiarly applicable to the case at bar. In passing on whether or not the constitutional question was substantial, Mr. Justice Sanford said, at pages 716-717: "The federal question presented, being one which requires analysis and exposition for its decision is not frivolous, and the motion to dismiss the writ of error is accordingly denied. *Louisville and N. R. Co. v. Melton,* 218 U. S. 36, 39 (1910); 54 L. ed. 921, 47 L.R.A. (N. S.) 84; 30 Sup. Ct. Rep. 676."

Each question raised by the appellants is substantial and one "which requires analysis and exposition for its decision", and hence is entitled to plenary consideration with briefs on the merits and oral argument for its resolution.

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Rule 15 (1)(h) and (i) **Statement respecting matters in the appendices.**

As part of this document there is appended "Appendix A", which is the full opinion of the Supreme Court of Florida, filed December 11, 1953, rehearing denied April 9, 1954, including the concurring opinion and the opinion concurring in part and dissenting in part by Roberts, C. J., 71 So. 2d 148.

"Appendix B" is the decree and opinion of Circuit Judge J. Fritz Gordon of the Circuit Court of Dade County, Florida, filed January 3, 1953.

"Appendix C" is a copy of one of the identical orders and mandates appealed from.

"Appendix D" is a copy of Zoning Ordinance 289 of the City of Miami Beach, Florida, amended as of September 5, 1951, which is the ordinance in the form in effect at the time of the commencement of this action.

For all of the foregoing reasons this appeal should be allowed.

Respectfully submitted,

PALLOT, SILVER & MULLOY
JOHN M. MURRELL, *of record,*
RAYMOND L. WISE, *of record,*
Attorneys for Appellants

RAYMOND L. WISE
Of Counsel

By _____

APPENDIX A

Per Curiam opinion of the Supreme Court of the State of Florida, dated December 11, 1953, with concurring opinion and opinion concurring in part and dissenting in part by Roberts, C. J., all reported at 71 So.. 2d 148.

Opinion filed December 11, 1953.

Appeals from the Circuit Court for Dade County, J. Fritz Gordon, Judge.

Ben Shepard and Anderson & Nadeau, for Appellant.

Pallot, Silver & Mulloy and John M. Murrell and John M. Murrell, Jr., for Appellees.

PER CURIAM.

Ten different property owners in Miami Beach brought separate suits to restrain the city from enforcing Zoning Ordinance 289, in so far as it affects their properties. The said properties are embraced within a narrow strip of ocean frontage about two miles long, bounded on the south by what is known locally as the Firestone Estate, on the north by Royal York Hotel property, on the east by the Atlantic Ocean, and on the west by Collins Avenue and Indian Creek. It is shown that all the properties are similarly affected by the ordinance and that in each case there is a common question. Prior to the institution of these suits, complainants applied to the Zoning Board to rezone their properties and relieve them from the requirements of Ordinance 289, but their application was denied, and on appeal to the City Council, the order of the Zoning

Board was approved. Answers to the complaints were filed and the cases were consolidated and tried together. The evidence was taken by the Court and on final hearing motion of the city to dismiss was overruled and the relief prayed for was granted. One transcript has been lodged in this Court. It is composed of what was known under the old practice as the record proper and the bill of exceptions. It suffices for the main case. The other cases are here on the record proper. We approve this practice where more than one case is appealed. This opinion will dispose of all the appeals.

The primary question for determination is whether or not the plaintiff sustained the burden of showing that Zoning Ordinance 289 is unreasonable and not fairly debatable as applied to the properties of the plaintiff.

Both sides produced an impressive array of witnesses to support their contention, that is to say, the affirmative and the negative of this issue. They represented eminent economists, realtors and appraisors, municipal and county planners, city managers, economic analysts, builders and brokers, and directors of city planning boards, each fortified with a background of broad experience. The evidence supporting the issues was thoroughly explored.

On the evidence thus produced, the chancellor found that Ordinance 289 was enacted in 1930, since which time economic conditions in Miami Beach and the country at large have changed materially; that the property involved is a portion of 86 lots located between the Firestone Estate and the south line of the Royal York Hotel property; that said properties are bounded on the east by the Atlantic Ocean, on the west by Collins Avenue and Indian Creek,

and that while the development of Miami Beach has been phenomenal, this strip of 86 lots has been in a state of arrested development. The testimony shows, said the trial court, that there are very few families in the United States of sufficient means to own and support a home of the proportions required for these properties. One witness testified that the taxes, insurance and upkeep of his home was $15,000.00 per year, that the liberties taken of his place by the public with accompanying noise became so annoying that he was compelled to move out and rent it and the most he could secure for it was $7,200.00 per year. The Court's conclusion was that the property may have been suitable for single family residences when it was first zoned in 1930, but that under present restrictions, it is unproductive and a source of expense to the owner that will ultimately amount to confiscation. On the basis of this finding the Court ruled that said Ordinance restricting the property to single family residential use was arbitrary, unreasonable, oppressive, discriminatory and confiscatory, and bore no reasonable relation to, and was not conclusive to the welfare of the public. Accordingly, he ordered it rezoned for apartment house and hotel purposes.

The effect of the trial court's ruling was to hold that the ordinance was unreasonable and not "fairly debatable". In so holding did he properly appraise the evidence? In its highly controversial state did the trial court substitute his judgment for that of the City Council, and under the circumstances was he warranted in doing so? The leading case in the country on the question is Village of Euclid vs. Amber* Realty Company, 272 U. S. 365, 71 L. Ed. 303, 54 A.L.R. 1016, 47 S. Ct. 114, but we do not have to leave our own State in search of law to settle the

*Sic throughout.

point. In addition to the last cited case, appellant relies on State ex rel Taylor vs. City of Jacksonville, et al., 101 Fla. 1241, 133 So. 114; City of Miami Beach vs. Elsalto Real Estate Inc., (Fla.) 63 So. (2d) 495; Segal vs. City of Miami (Fla.) 63 So. (2d) 496 and State ex rel Realty Company vs. Ehinger, (Fla.) 46 So. (2d) 601. Appellee relies on Forde vs. City of Miami Beach, 146 Fla. 676, 1 So. (2d) 642; City of Miami Beach vs. Ocean & Inland Co., 147 Fla. 549, 3 So. (2d) 364 and City of Miami Beach vs. Ocean & Inland Co. 147 Fla. 480, 3 So. (2d) 364 and City of Miami Beach vs. First Trust Co. (Fla.) 45 So. (2d) 681.

Village of Euclid vs. Amber Realty Company approved the authority of a municipality to promulgate zoning regulations on the theory that the increase and concentration of population has developed and will continually require more restrictions in respect to the use of private property in urban centers. This case also promulgated the doctrine of legislative classification for zoning purposes and declared that if "fairly debatable" it should be upheld. The argument in the case at bar revolves around this doctrine. While Village of Euclid vs. Amber Realty Company approved the zoning and segregation of private property into residential, business, and industrial districts, it was as equally emphatic that if such zoning did not have some substantial relation to the public health, safety, morals, and general welfare, it would be held to be arbitrary, unreasonable, and unconstitutional. There is no warrant whatever in this, or any other, case to support the thesis that zoning boards are infallible and that any kind of a zoning proposition they promulgate will be upheld. In other words, zoning boards are in the same category as all other administrative boards. Their ordinances

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and regulations will be given serious consideration and their judgments great weight, but where it is conclusively shown that they deprive one of his property without due process or otherwise infringe on State or Federal constitutional guarantees unreasonably, such ordinances and regulations cannot be said to be reasonably debatable and will be stricken down.

We understand the doctrine of Marbury vs. Madison I Cranch (U.S.) 137, 2 L. Ed. 60, to be applicable. "When it is clear that a statute transgresses the authority vested in the legislature by the constitution, it is the duty of the courts to declare the act unconstitutional because they cannot shrink from it without violating their oaths of office. This duty of the courts to maintain the constitution as the fundamental law of the state is imperative and unceasing" and applies as imperatively when properly invoked against a zoning ordinance as it does against an act of the legislature. In State ex rel Taylor vs. City of Jacksonville; City of Miami Beach vs. Elsalto Real Estate Inc.; Segal vs. City of Miami; Forde vs. City of Miami Beach; City of Miami Beach vs. Ocean and Inland Co. and City of Miami Beach vs. First Trust Co. supra, we called attention to this rule and in some instances invoked it.

But appellant says that in City of Miami Beach vs. Elsalto Real Estate Inc., and in Segal vs. City of Miami, supra, we retreated from or modified the doctrine of City of Miami Beach vs. First Trust Company, better known as the Firestone case. We do not so understand the Firestone case. In that case we were confronted with one isolated tract of land that had served its purpose as an estate and was in the hands of the trustee for disposition. All of the land to the south between Collins Avenue and the

ocean had been zoned and sold for hotel and apartment houses and in fact, was occupied for that purpose. It was shown, and the Master found, that the passage of time and changed circumstances had reduced the value of the property by three-fourths and that if it were sold for single family purposes the owner would lose more than one million dollars. It was further shown that the zoning ordinance had been in effect fifteen years, during which time many physical, economic, and social changes in the locus had transpired. It was conclusively shown that not a single property owner in the city would be hurt by removing the zoning restrictions from the Firestone estate; yet if the restrictions were permitted to remain, they would cost the owners more than a million dollars. It was also shown "that the zoning plan of the city would not be jeopardized or materially affected" by removing the zoning restrictions. Under such circumstances a majority of the court concluded that the zoning plan amounted to confiscation and removed it from the Firestone lands. In the case at bar there is substantial showing that the sweeping rezoning sought for the property in question would jeopardize, or materially affect, the entire comprehensive zoning plan of the City as well as other matters which will be discussed hereafter.

When the Firestone case was before us originally and on rehearing, the main question urged was no different from that urged in this case: Viz: The zoning ordinance is presumptively valid, that if fairly debatable the action of the city in passing it should be upheld and the Court should not substitute his judgment for that of the City Council. The case was thoroughly litigated on that theory. The majority of the Court reached the conclusion that due to changed conditions the validity of the ordinance was

not fairly debatable, that it was unreasonable, arbitrary and invalid and amounted to confiscation as to the Firestone property. True, a very respectable minority of the Court had a different view and dissented from the majority. It may be that the minority thought the point was fairly debatable and that the majority substituted its judgment for that of the City Council, but the majority had no such feeling.

So much for the Firestone case.

Now let us examine the case at bar and see if it is in point with or in any wise controlled by the Firestone case or any other case cited herein. Instead of being concerned with a single isolated tract of land, as we were in the Firestone case, we are concerned here with ten tracts interspersed among 86 lots or tracts extending from the Firestone estate north to the Royal York Hotel property, a distance of about two miles, bounded on the east by the Atlantic Ocean and on the west by Collins Avenue and Indian Creek. It is one of the most valuable ocean front areas in the world. So valuable, it is pointed out, that there are only about 4500 people in the United States who are able to own enough of it on which to construct and support a home of the kind required by the ordinance, account of which it is said to be in a state of arrested development.

The City of Miami Beach declined the request of complainants to rezone on the general theory that Ordinance 289 was adopted pursuant to Chapter 9837, Special Acts of 1923, after more than a year of study and advice on the part of the best zoning experts in this country, that due to the location and configuration of the land it is ideally suited to single family estates, that it is a long

narrow strip along the ocean transversed on the west by Collins Avenue, which is heavily congested and that to rezone would seriously aggravate the traffic problem, that there is already an undue preponderance of land in the City of Miami Beach zoned for hotel and apartment use, and at present there is no need for more, that to make other lands available for that purpose would seriously damage, if not destroy, the values of lands and buildings now in use for that purpose on which countless millions have been invested in reliance on Ordinance 289, that the economic welfare of the City is almost entirely dependent on the prosperity of the hotel and apartment house business, that the economic history of that business in the City of Miami Beach has demonstrated that the construction of other new and modern hotels to the north would so reduce the patronage of those already in use that they would become so needless and unpopular as to raise the danger of creating a blighted area. It is further charged that the 86 lots in question are the only lands in the City of Miami Beach that are available to the public where the view to the ocean is unobstructed, and that rezoning for hotels and apartments will result in overcrowding, the increase of fire and other hazards and would overtax the sewer, water and fire fighting facilities, thus endangering the public health and safety.

There is ample evidence to support the theory of the City; on the other hand, there is much to contradict or offset it. It is not shown, as it was in the Firestone case, that if the zoning restrictions are removed no other property owner would be hurt or that the general zoning plan would remain unaffected. The reasonable inference is that if the zoning restrictions are removed from the ten tracts interspersed among the 86 tracts, the zoning plan as

to all will be materially affected, if not, in fact, destroyed. The City contends that not only is this likely to happen but also that there will be brought about the other results detailed in the preceding paragraph. Some of the results contended for in this paragraph we do not think of consequence and could be compensated for, but some of them raise serious policy, economic and administrative questions that place it within the "fairly debatable" doctrine.

An ordinance may be said to be fairly debatable when for any reason it is open to dispute or controversy on grounds that make sense or point to a logical deduction that in no way involves its constitutional validity. If such a deduction supports the City's contention that to remove the present zoning restrictions would destroy the entire zoning scheme and bring about the evils contended by the City, then the Court should not substitute its judgment for that of the City Council. There is no showing here that, even as now zoned, the lands are not of great value. In fact the only deduction from the record is that they are very valuable. When the contention of the City is analyzed and viewed in the large, there are many elements in this case that were not involved in the Firestone case, or any of the other cases cited. They make this case totally different from any other that has been brought here. The right of access of the public to the beaches, the effect on the zoning scheme, traffic regulations, economic welfare of the City, proper timing to zone for hotels and apartments, including others, are involved in this case. The amount of property involved is so great that to change its classification would be to necessarily affect the entire general zoning plan of the city. These are matters for the City to settle and adjust and when they enter the picture the Court should not invade the City's authority, absent

a paramount constitutional right which is not shown in this case.

The fact that the properties involved are much more valuable for hotels and apartments than they are for single family residences does not conclude the point of whether or not the ordinance is "fairly debatable". This is a factor that must be weighed against the public welfare or the effect on the community at large. Constitutionality vel non is often present in determining the question of "fairly debatable" but the pattern for determining it is a more complex one when as pointed out, a large area of many owners is involved than it is when the property of a single owner in one parcel is brought in question. There is no showing here of confiscation. It may or may not be that some owners will suffer a reduction in price if they sell before the City in its discretion changes the zoning plan. After all, that is the matter of greatest importance, and it is a debatable question. It cannot be solved by looking at one man's property, but must be resolved by a contemplation of the whole picture. So considered, I find no abuse of discretion.

Other questions presented have been considered but they become inconsequential or have no place in the case. Whether answered in the affirmative, or in the negative, the answer to the first question concludes the controversy. I think the first question was fairly debatable and that the decree of the chancellor should be reversed.

Reversed without prejudice on the part of appellees to assert any right they may have under the City charter.

TERRELL, SEBRING, MATHEWS and DREW, J. J., Concur.

THOMAS, J., Concurs Specially.

ROBERTS, C. J., and HOBSON, J., Concur in part and Dissent in part.

THOMAS, J., Concurring Specially:

I concur in the conclusion for the reasons given in my dissenting opinion in City of Miami Beach v. First Trust Co., (Fla.) 45 So. 2d 681.

ROBERTS, C. J. (Concurring in part and Dissenting in part)

While I concur in the judgment of reversal, it is my opinion that this case turns on the fundamental proposition that the courts are not law-making bodies. The City Council of the City of Miami Beach is the legislative body whose duty it is to "amend, supplement, change, modify or repeal the regulations and boundaries" established in the Zoning Ordinance of that city if, after a public hearing, it is determined that a change in the original zoning plan would best serve the public health, safety and general welfare; and the courts of this state have no authority to do so. As stated in Cleveland Trust Co. v. Village of Brooklyn (Ohio) 110 N. E. 2d 440, appeal denied, 108 N. E. 2d 679:

> "Granting the jurisdiction of the court in a particular case to declare invalid the whole or any part of a zoning ordinance in appropriate proceedings where the zoning in question is an invasion of constitutional rights, having no relationship to the public safety, health, morals or

> general welfare of a community, there is a restriction upon the judicial process whereby it is limited to a review of legislation to determine whether the legislative body acted in such an unconstitutional manner. It is fundamental that a court may not legislate. The judicial process is to interpret the law and not to make law. Consequently, the trial court in the instant case was without jurisdiction to determine the ultimate classification of the area in question as a Class E or industrial use by ignoring the other intermediate uses established by the ordinance, and thereby substituting its judgment for that of the council of the Village of Brooklyn. Its action in so doing was prejudicially erroneous * * *."

Clearly, the basic principle upon which our system of government is based — requiring, as it does, the distinct separation of the executive, legislative and judicial branches of government—prohibits our courts from infringing upon the city's legislative powers with respect to zoning, as well as any other legislative power properly delegated to a municipality by the Legislature. And, in my opinion, the lower court in the instant case has, in effect, usurped the legislative power of the city's Zoning Board. Let us analyze the facts here involved.

The plaintiffs applied to the City Council of the City of Miami Beach for a change in the zoning classification of their respective lots from an RAA use to an RE use—that is, from the most restrictive single-family residential use, requiring a lot area of 40,000 square feet, to multiple-family use in which hotels are permitted to be located. In the original application to the City Council filed by the

attorney representing six of the plaintiffs, the request was that "the City Council of the City of Miami Beach take into immediate consideration the rezoning of the property hereinbefore described [comprising 8½ lots of a total of 86 lots in the strip of land in question] from its present zoning under the provisions of Miami Beach Zoning Ordinance No. 289 to RE." In an amendatory letter sent later to the City Council, the previous letter was clarified to indicate that the request was "that the City Council of the City of Miami Beach conduct a public hearing in the manner prescribed by law and/or established by custom for the purpose of considering the rezoning of certain parcels of land from their present zoning under the provisions of Miami Beach Zoning Ordinance No. 289 to RE zoning." The request on behalf of Mrs. Reid, one of the plaintiffs herein, was simply that the City "change the zoning that exists at the present time, to-wit, R-AA Estate District Single Family, so as to allow for multiple family, apartment and hotel use of the above described property." The attorney for Mrs. Reid was advised by the City Clerk that this request had "been presented to the City Council at their recent meeting and has been denied." The record shows that the requests for rezoning of at least some of the property were referred to the Zoning Board of Adjustment; that the Zoning Board of Adjustment had recommended that the requests for rezoning be denied; and that "The Council voted unanimously to accept the recommendation of the Zoning Board and to deny the requests for rezoning."

No attempt was made by the plaintiffs to compel the City to hold a public hearing, as requested in the amendatory letter of one of the attorneys, on the question of rezoning their property to an RE use; nor is there anything

in the record to show that the plaintiffs in requesting such public hearing represented "the owners of a majority of frontage" in the particular area here in question—that is, the strip of ocean front property between the Firestone Estate on the south and the Royal York Hotel on the north (hereinafter referred to as "the strip")—as provided by Section 21 of the Zoning Ordinance (No. 289) of the City of Miami Beach. Both the general law relating to zoning (Section 176.05, Florida Statutes) and the Zoning Ordinance of the City of Miami Beach (Section 21) provide the method by which a given area may be "rezoned"; both require a public hearing, after public notice, before any change in or amendments to the zoning ordinance can be made.

It is clear, then, that the applications to the City of the respective plaintiffs were, in essence, either requests for a "variance" from the ordinance or they were requests for "spot zoning". A "variance" on the ground of unnecessary hardship is authorized only when it is shown that the use to be authorized by the variance will not alter the essential character of the locality—the variance must be "consistent or in harmony with, or not subversive or in derogation of, the spirit, intent, purpose or general plan of such regulations." Troup v. Bird, Fla., 53 So. 2d 717, 721, citing 58 Am. Jur., Sec. 200, p. 1049. Clearly, the use sought by the plaintiffs was not "consistent or in harmony with" the use classification of "the strip", as it is presently zoned, so that a "variance" could not validly have been granted.

And certainly a rezoning by the City Council of the 14½ lots here involved (interspersed as they were among 86 lots similarly situated) would have been nothing less than "spot zoning", a practice universally condemned. See Yokley, Zoning Law and Practice (1948) Sec. 82, page 152.

Thus, the plaintiffs' only administrative remedy here to obtain a change in the zoning of their lots from RAA to an RE use was to compel the City Council to hold a public hearing, after due public notice, as required by Section 21 of the Miami Beach Zoning Ordinance and Section 176.05 supra (the provisions of which are expressly stated to be cumulative to any local or special zoning laws), on the question of whether the entire area involved should be reclassified from an RAA to an RE use; if after such hearing the City Council refused to rezone the area, as requested, then it may be that in a judicial review of the decision of the local zoning authority, as authorized by Sections 176.16, et seq., Florida Statutes, the court would be authorized to decide the question of whether the zoning authority's refusal to rezone in the requested manner was an unreasonable exercise of the zoning power.

But no such case was here made. Thus, the only question before the lower court was whether the existing RAA classification was or was not unreasonable or unconstitutional as applied to the plaintiffs' lots. It could not, in a paraphrase of the Cleveland Trust Co. case, supra, "determine the ultimate classification of the area in question as an RE or hotel use by ignoring the other intermediate uses established by the ordinance, and thereby substitute its judgment for that of the City Council of the City of Miami Beach." The Miami Beach Zoning Ordinance provides for six "intermediate uses" between the classifications RAA and RE: the "RA" Estate District, 30,000 sq. ft. lot area per family; "RB" Estate District, 18,000 sq. ft. lot area per family; "RC" Estate District, 10,000 sq. ft. lot area per family; "RD" Single-Family District, 6,000 sq. ft. lot area per family; "RDD" Modified Single-Family District permitting two-family dwellings; and "RDE" Restricted

Multiple-Family District, permitting two-family dwellings, apartment buildings containing not more than four single-family housekeeping units, and bungalow or house courts. And although there was considerable testimony that the City's comprehensive zoning plan—and its provisions for supplying the necessary public services based on such plan —would be disrupted by a rezoning of the strip to RE (hotel) use (which question, as noted, was not properly before the court) there was nothing in the record to show that any of the foregoing intermediate uses would be unreasonably disruptive of such plan, nor that the comprehensive zoning plan required, absolutely, the retention of the RAA classification to the strip.

But, as heretofore noted, the question of the ultimate classification of the strip—whether to RE use or any of the intermediate uses—is, first of all, a legislative matter; after the local zoning authority has legislated, then the courts may review the reasonableness of its legislation. Just as the courts have "no discretion in determining which election districts should comprise a particular County Commissioner's District," Prince v. State, Fla., 25 So. 2d 5, 8, they have no discretion in determining the ultimate zoning classification of a given area.

It is my opinion, then, that the lower court erred in decreeing that the plaintiffs' lots should be rezoned to RE use, as an unauthorized exercise by the court of the legislative power conferred by law on the City Council of the City of Miami Beach, and I would reverse that portion of the decree.

On the single question of whether the existing classification of the lots to RAA single-family use was a reason-

able exercise of the zoning power, it is my opinion that the lower court did not err in holding such a classification unreasonable, arbitrary and discriminatory. As pointed out by the Chancellor in his decree:

> "The evidence is conclusive that while the development of the entire City of Miami Beach has been nothing short of phenomenal and while the entire ocean front in Miami Beach, available for private construction, has been built up, this strip of 86 lots has been in a state of arrested development.
>
> "There are 31 homes in this strip, only 7 of which have been built since 1935 and it appears from the evidence that there is little, if any, market for these properties either for rent or sale as private residences.
>
> "Testimony shows that there are only a very few families in the United States of America with sufficient fortune to keep up a home of the size required to be built on these properties. Testimony of one witness shows that his taxes on a home that he owns was over $8,000.00 per year and that insurance and other costs required him to expend $15,000.00 a year for taxes, insurance, and other costs. That he had to rent the home finally because he could not stand the noise and the invasion of his privacy, and upkeep of the property, and that the most rent that he could get out of the property was $7,200.00 a year, which is less than the taxes on the property."

While this court follows the rule that the courts should not substitute their judgment for that of a local zoning authority when the question is "fairly debatable", in my opinion there is no room for reasonable debate that the restriction of the plaintiffs' property to RAA use is essentially arbitrary and unreasonable.

While the Zoning Ordinance at the time of its adoption by the City of Miami Beach may not have been unreasonable in its application to the property here in question, the reasons for reserving this strip for large estates no longer exist; the property obviously has not developed for the purpose for which it was originally intended by the city planners and, in fact, the City's own witness testified that the winter residents of the caliber which the City sought to attract by zoning the strip as RAA now prefer quieter and more remote areas, such as Golden Beach, for their permanent winter homes. Located as it is on a heavily travelled state highway, with hotels and apartments on both the north and south sides, and with condemnation proceedings by the City already under way to convert two separate portions thereof to public park purposes, it is understandable that such persons find "the strip" undesirable for residential purposes.

I would affirm that portion of the decree of the lower court holding the present classification of the plaintiffs' property to be invalid, and I would reverse that portion of the decree which directs the City Council to rezone it as an RE Estate District. The City Council should, however, be given an opportunity to hold a public hearing within a reasonable time on the question of rezoning the strip to other than RAA use, and the cause is remanded to the lower court with directions to require the City Coun-

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cil to hold such a public hearing within such time as may be fixed by the Chancellor, pending the outcome of which hearing the property should retain its present classification.

HOBSON, J., Concurs.

APPENDIX B

Decree and Opinion of Circuit Judge, J. Fritz Gordon, of the Circuit Court of Dade County, Florida, filed January 3, 1953, and unreported.

On January 3, 1953 Final Decree was filed and duly recorded on January 8, 1953 in Chancery Order Book 1062 on Page 134 in the words and figures following, to-wit:

(CAPTION OMITTED)

ORDER

This cause came on to be heard before me for final hearing on the pleadings after being assigned to this division by reason of the rules of this court. The testimony of all the witnesses was heard by me and all evidence submitted before me, and the testimony was to apply to each of the ten cases. After hearing all of the evidence and having read parts of the testimony over again, having heard argument of counsel and then viewing the property in question, the court finds that the plaintiffs in this cause are the owners of the following described property:

> Lot 28 and Out Lot 28; Lot 234, AMENDED PLAT 1ST OCEAN FRONT SUBDIVISION, according to the Plat thereof, recorded in Plat Book 9, at page 78, of the Public Records of Dade County, Florida.

The plaintiffs seek to enjoin the defendant, The City of Miami Beach, from enforcing the provisions of the City of Miami Beach Ordinance No. 289, which restricts the

use of the property to the most restrictive use classification, that is, to "RAA" and "RB" of single family residences, and seeks to require the City to permit the plaintiff to use said property for multiple family and hotel or "RE" use.

The validity of the ordinance, as applied to the above property, in conditions that existed at the time that the ordinance was passed in 1930 is not questioned. The ordinance, by the action of the council of The City of Miami Beach, has many times been amended and the courts have on several occasions declared certain portions of the ordinance to be invalid.

The plantiffs in this cause attack the restriction of The Miami Beach Zoning Ordinance No. 289, as it applied to the above property, contending it to be arbitrary, unreasonable, and invalid, as it applied to said property, because said property is no longer adaptable to the use for which it is zoned by reason of physical changes in the surrounding area and the phenomenal growth of The City of Miami Beach.

The defendant City contends that the restrictions imposed by the ordinance as they affect the above property are reasonable and that the above property is properly zoned "RAA".

The area in which the property was located was strictly residential, suburban, and remote from heavy traffic, hotel, and apartment houses, when Miami Beach Ordinance No. 289 was adopted in 1930 by the City Council of Miami Beach. At that time the year-round population of the City of Miami Beach was less than 7,000 and has

increased to more than 46,000 by 1950 and this number is tremendously increased by approximately 125,000, due to the influx of tourists who come to Miami Beach.

Economic conditions have changed in the City of Miami Beach and, the United States generally. There is a tremendous increase in taxes on income since 1930 when Miami Beach Ordinance No. 289 was passed.

Collins Avenue from 44th Street North in front of the above property has been widened since 1930 and the traffic has increased considerably by reason of the development of hotels, apartment houses, and business districts to the north and south of the above property to the extent that the said road is now a main arterial highway extending from the extreme south end of Miami Beach to its extreme north boundary.

The City of Miami Beach has adopted important material changes in permissable uses of property since the adoption of Ordinance No. 289 and now proposes to establish public parks and beaches, one to the north and one to the south in close proximity to the above described property which will further increase traffic on Collins Avenue in front of said property and further add to the invasion of the privacy of private estate residential property.

The above property is among 86 lots running north from the property known as the Firestone Estate to the south lot line of the Royal York hotel property bounded on the east by the Atlantic Ocean and the west by Collins Avenue and Indian Creek. The evidence is conclusive that while the development of the entire City of Miami Beach has been nothing short of phenomenal and while the entire

ocean front in Miami Beach available for private construction, has been built up, this strip of 86 lots has been in a state of arrested development.

There are 31 homes in this strip, only 7 of which have been built since 1935 and it appears from the evidence that there is little, if any, market for these properties either for rent or sale as private residences.

Testimony shows that there are only a very few families in the United States of America with sufficient fortune to keep up a home of the size required to be built on these properties. Testimony of one witness shows that the taxes on a home that he owns was over $8,000.00 per year and that insurance and other costs required him to expend $15,000.00 a year for taxes, insurance, and other costs. That he had to rent the home finally because he couldn't stand the noise and the invasion of his privacy, and the up-keep of the property and that the most rent that he could get out of the property was $7,200.00 a year, which is less than the taxes on the property.

The tax bills on vacant property were placed in evidence and show that each property is taxed very high.

The subject property, while it may have been suited for the purposes for which originally zoned in 1930 is not today useful or suitable for that purpose. That in its present state, under the restrictions imposed by Miami Beach Ordinance No. 289, it is unproductive and a source of expense to the owner. That the high taxes on said property would eventually amount to a confiscation of said property.

The evidence is conclusive that if the zoning restrictions were relaxed to permit hotel or apartment buildings thereon, the property would increase in value to about four times its present value, or more, and would be marketable as such; that the highest and best use of ocean front land on Miami Beach is for hotels and that the fine hotels on Miami Beach are on the ocean front.

The testimony also shows that the subject property is ideally suited for hotel purposes because of its unusual and large size and where off street parking can be provided and its location on the ocean front.

There was testimony before the court that the threat of the rezoning of this property was the reason for its not having been further developed but there was no testimony before me that the threat to rezone this property was made or heard prior to the last four or five years.

That the court has required the rezoning of the Firestone Estate property which is at the extreme south end of the 86 lots and certainly the lot just north of the Firestone Estate would be unsuitable for private residence and if it were rezoned then the lot just north of that property would be unsuitable for private residence and so forth up the entire strip of property which would cause a multiplicity of law suits.

That to relax the zoning restrictions imposed by the ordinance to permit hotel and apartment use would not adversely affect the public health, safety, or welfare. To continue the restrictions imposed by the Ordinance No. 289 against the subject properties would in effect amount

to a taking without compensation, and the ordinance as it affects the subject properties is arbitrary, unreasonable, and unconstitutional.

The court does find, however, that the Collins Avenue roadway in front of the subject properties would not be sufficient to take care of the increased traffic if hotel and apartment houses were built on all of the properties and, that the property owners herein should convey to the city, without cost, a portion of the property affected to permit the widening of said highway.

Upon the foregoing findings, as well as upon other matters appearing in the record of this cause, the plaintiffs have fully and clearly established and maintained the allegations contained in the bill of complaint as amended by sufficient and convincing evidence. The equities are with the plaintiffs and the plaintiffs are entitled to the relief prayed for in the bill of complaint. It is, therefore,

ORDERED, ADJUDGED and DECREED that the City of Miami Beach Ordinance No. 289, as it applies to property herein above described which is the subject matter of this suit, restricting said property to single family residential use is arbitrary, unreasonable, oppressive, discriminatory, and confiscatory, and bears no reasonable relation to and is not required for the general welfare of the public and is therefore invalid and unreasonable. It is, further

ORDERED, ADJUDGED and DECREED that the rezoning of the subject property to permit multiple family, hotel and apartment use would not affect the public and general welfare. It is, further

ORDERED, ADJUDGED and DECREED that the plaintiff is entitled to the relief prayed for in the bill of complaint and the defendant is lawfully required to permit any and all uses of the subject properties as permitted in the use district "RE" and area district "15", under the provisions of the Miami Beach Ordinance No. 289. It is, further

ORDERED, ADJUDGED and DECREED that the defendant, the City of Miami Beach, its officials, agencies, representatives and employees, are hereby permanently enjoined from asserting the provisions of said Ordinance No. 289 as it purports to restrict the use of the subject property. It is, further

ORDERED, ADJUDGED and DECREED that the plaintiffs have and recover from the defendant, The City of Miami Beach, its reasonable costs herein expended.

DONE and ORDERED in Miami, Dade County, Florida, this 3rd day of January, A. D., 1953.

J. FRITZ GORDON,
Circuit Judge.

APPENDIX C

Consists of one of the Orders and Mandates of the Supreme Court of the State of Florida appealed from. The others are identical in form.

Filed this 12 day of April A. D. 1954.

Recorded this 13 day of April, A. D. 1954.

In Chancery Order Book 1225 Page 39.

E. B. LEATHERMAN,
Clerk of Circuit Court.

By /s/ G. Johnson, D. C.

MANDATE FROM SUPREME COURT

Book 1125 Page 39

THE STATE OF FLORIDA

Filed for Record, Apr. 12, 2:54 P.M., 1954.

E. B. LEATHERMAN, Clk Ct Ct, Dade Co. Fla.

To the Honorable, the Judge of the Circuit Court for the Eleventh Judicial Circuit of Florida, Greeting:

WHEREAS, Lately in the Circuit Court of the Eleventh Judicial Circuit, in and for the County of Dade in a cause wherein Raljean, Inc., a Florida corporation, was plaintiff, (Circuit Court #151850 — In Chancery) and The City of Miami Beach, a municipality created and existing under the laws of the State of Florida, was defendant,

the Decree of said Circuit Court was rendered Jan. 3, 1953 as by the inspection of the transcript of the record of the said Circuit Court which was brought into the Supreme Court of the State of Florida, by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears:

AND WHEREAS, at the June Term of said Supreme Court holden at Tallahassee, A. D. 1953, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel; in consideration whereof, on the 11th day of December, A. D. 1953 it was considered by said Supreme Court that the said Decree of the Circuit Court be and the same is hereby reversed without prejudice on the part of Appellees to assert any right they may have under the City Charter; it is further ordered by the Court that the Appellant do have and recover of and from the Appellee its costs by it in this behalf expended, which costs are taxed at the sum of.....Dollars; therefore,

YOU ARE HEREBY COMMANDED, That such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said Decree of the Circuit Court notwithstanding.

WITNESS, The Honorable B. K. ROBERTS,
Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this 9th day of April, 1954.

/s/ GUYTE P. McCORD,
Clerk Supreme Court of Florida.

(SEAL OF SUPREME COURT OF FLORIDA)

APPENDIX D

ORDINANCE NO. 289

Zoning Ordinance of Miami Beach, Florida

Amended as of September 5, 1951

AN ORDINANCE TO REGULATE AND RESTRICT THE ERECTION, RECONSTRUCTION, ALTERATION, LOCATION AND USE OF BUILDINGS, STRUCTURES, LAND AND WATER, FOR TRADE, INDUSTRY, RESIDENCE, OR OTHER PURPOSES; TO REGULATE AND RESTRICT THE SIZE OF BUILDINGS AND OTHER STRUCTURES HEREAFTER ERECTED OR ALTERED, THE SIZE AND DIMENSIONS OF YARDS, COURTS AND OTHER OPEN SPACES SURROUNDING BUILDINGS; TO REGULATE AND RESTRICT BUILDING LINES AND THE PERCENTAGE OF LOT THAT MAY BE OCCUPIED, AND THE DENSITY OF POPULATION, AND FOR SAID PURPOSES TO DIVIDE THE CITY OF MIAMI BEACH INTO DISTRICTS OF SUCH NUMBER, SHAPE AND AREA AS MAY BE DEEMED BEST SUITED TO CARRY OUT THESE REGULATIONS, AND FOR EACH SUCH DISTRICT TO IMPOSE REGULATIONS AND RESTRICTIONS DESIGNATING THE KINDS OR CLASSES OF TRADES, INDUSTRIES, RESIDENCES OR OTHER PURPOSES FOR WHICH BUILDINGS OR OTHER STRUCTURES OR PREMISES MAY BE PERMITTED TO BE ERECTED, ALTERED OR USED; TO PROVIDE A METHOD FOR AMENDMENT, SUPPLEMENT, CHANGE, MODIFICATION AND REPEAL

OF REGULATIONS, RESTRICTIONS AND BOUNDARIES; TO PROVIDE A METHOD OF ADMINISTRATION; TO PROVIDE A BOARD OF ADJUSTMENT AND PRESCRIBE ITS POWERS AND DUTIES, AND TO PRESCRIBE PENALTIES FOR THE VIOLATION OF THE PROVISIONS OF THIS ORDINANCE AND ALSO PROVIDE FOR ITS ENFORCEMENT.

WHEREAS, by the provisions of Chapter 9837, No. 719 Special Laws of Florida, 1923, authority is conferred upon the City of Miami Beach to establish districts or zones within its corporate limits for the purpose of regulating the use of land and buildings, the height of buildings, the size of open spaces surrounding buildings and density of population, and

WHEREAS, the City Council of the City of Miami Beach deems it necessary in order to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provisions of transportation, water, sewerage, schools, parks and other public requirements, to make and promulgate such regulations with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout said City in accordance with a comprehensive plan:

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Miami Beach, Florida:

SECTION 1.

DEFINITIONS: For the purpose of this Ordinance, certain terms and words are herein defined. Words used in the present tense include the future; the singular number includes the plural, and the plural the singular; the words "used for" include the meaning "designed for"; the word "structure" includes the word "building"; the word "shall" is mandatory and not directory; the word "lot" includes the words "plot" and "tract".

ACCESSORY BUILDING: A subordinate building, or portion of the main building, which is located on the same lot as the main building or on an adjacent lot, the use of which building is clearly incidental to the use of the main building.

ACCESSORY USES: Uses customarily incident to the principal uses as permitted, but not including any commercial activity.

ALLEY: Any roadway, place or public way dedicated to public use and twenty (20) feet or less in width, unless otherwise officially designated as a street.

APARTMENT: A dwelling designed for occupancy otherwise than as a one-family dwelling, or a two-family dwelling. The term "Multiple Dwelling" shall be understood to include apartment houses, bungalow courts, and all other family dwellings of similar character, but not to include hotels or apartment hotels.

APARTMENT HOTEL: An apartment building, under resident supervision, which maintains an inner lobby

through which all tenants must pass to gain access to the apartments and which may furnish dining room service for tenants only. (427)

(557) (Definition deleted)

BARBECUE STANDS: Any establishment serving foods where provisions are made for customers to drive across the curbs or sidewalk lines and receive service in automobiles or other similar vehicles, and/or establishments where meats are prepared outside of an enclosed building. (477)

BUILDING: Anything constructed or erected, the use of which demands a permanent location on the land; or any thing attached to something having a permanent location on the land.

BULKHEAD: See Ordinance 813.

BUNGALOW COURTS: (House Courts): A "Bungalow Court" or "House Court" is a group of two or more single-family dwellings on one or more adjoining lots, having a separate outside entrance on the ground floor level for each single-family dwelling.

CABARET: The term "Cabaret" as used in this ordinance means a place of business, other than a night club, located in a bona fide restaurant, or in a hotel having 100 or more guest rooms, where intoxicating liquor is sold, given away or consumed on the premises, and where entertainment is permitted or provided for guests, in a wholly enclosed, soundproofed, air conditioned room or rooms, between the hours of midnight and 1:00 o'clock A. M. on

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days other than Sunday, in addition to the hours during which such entertainment is otherwise premitted by ordinance. (936)

CLUB, PRIVATE: The term "Private Club" shall pertain to and include those associations and organizations of a fraternal or social character, not operated or maintained for profit. "Private Clubs" shall not include casinos, night clubs, or other institutions operated as a business.

CLUB, NIGHT: The term "Night Club" shall pertain to and include restaurants, dining rooms and other similar establishments where floor shows or other forms of lawful entertainment are permitted or provided for guests at any time between the hours of 1:00 o'clock A. M. and 7:00 o'clock A. M. in addition to the hours during which such entertainment is otherwise permitted by ordinance. (934)

COURT: An open, unoccupied, unobstructed space on the same lot as a building. (447)

COURT, INNER: A court not extending to a street or alley, or to a front, side or rear yard.

COURT, OUTER: A court extending to a street or alley. (447)

DWELLING, MULTIPLE-FAMILY: See Apartment.

DWELLING, TWO-FAMILY: A detached building, divided horizontally or vertically and designed for or occupied by two single-family housekeeping units; contained entirely under one roof and having one dividing partition common to each unit or having the ceiling structure of the lower unit the floor structure of the unit above. (427)

DWELLING, ONE-FAMILY: A detached building designed for or occupied exclusively by one family.

FAMILY: One or more persons occupying premises and living as a single housekeeping unit, as distinguished from a group occupying a boarding house, a lodging house or hotel, as herein defined.

GARAGE, MECHANICAL: Any premises, except those described as a private or storage garage, where automotive vehicles are mechanically repaired, rebuilt or reconstructed.

GARAGE, PRIVATE: A garage in which no business, service or industry connected directly or indirectly with motor vehicles is carried on.

GARAGE, STORAGE: Any buildings, except those described as a private garage, used for the storage only of automotive vehicles, or where any such vehicles are kept for remuneration, hire or sale. (843)

SERVICE STATION: A building or place of business where gasoline, oil and greases, batteries, tires and automobile accessories are supplied and dispensed to the motor vehicle trade, and also where the following services are rendered, and none other: (625)

1. Sale and Servicing of Spark Plugs and Batteries.
2. Tire Repair and Servicing, but no Re-capping.
3. Replacement of Mufflers and Tail Pipes, Water Hose, Fan Belts, Brake Fluid, Light Bulbs, Floor Mats, Seat Covers, Wiper Blades, Arms for Windshields and replacement of grease retainers and wheel bearings.

4. Radiator cleaning and flushing.
5. Washing and Polishing.
6. Greasing and Lubrication.
7. Exchanging Fuel Pumps and installing Fuel Lines.
8. Minor servicing or replacement of carburetors.
9. Emergency wiring repairs.
10. Adjusting brakes and installing exchange brake shoes.
11. Tuning engines, with the exception of grinding valves, cleaning carbon or removing the head of engines and/or crank case.

GOLF COURSE: The standard size golf course having nine, eighteen or more holes, installed on tracts having an area greater than forty (40) acres.

HOTEL: A building or premises where lodging accommodations of more than five (5) rooms are provided. (340)

LOT. A parcel of land fronting on a street, place, way or waterway, which is or may be occupied by a building and its accessory buildings, including the open spaces required under this ordinance, and which parcel of land is a matter of record in Dade County, Florida.

LOT, CORNER: A lot abutting on two or more streets at their intersection.

LOT, INTERIOR: A lot other than a corner lot.

LOT, THROUGH: An interior lot having frontage on two streets.

LOT, DEPTH: The depth of a lot, for the purposes of this ordinance, is the distance measured in the mean direction of the side lines of the lot from the mid-point of the street lot line or bulkhead line, to the opposite main rear line of the lot.

LOT LINES: The lines bounding a lot as defined herein.

LOT WIDTHS: The width of a lot, for the purpose of this ordinance, is its mean width measured at right angles to its depth.

MIXED OCCUPANCY: Occupancy of a building or land for more than one use.

NON-CONFORMING USE: A building or land occupied by a use that does not conform with the regulations or the use district in which it is situated.

PLACE: An open, unoccupied public space other than a street or alley, permanently reserved for purposes of joint access to abutting property.

PORCH: A roofed space open on three sides, one or two stories in height.

PRESSING CLUB: A business establishment with steam clothes presses and with not more than one self-contained dry cleaning unit which shall be screened from the street by enclosures or other suitable means and which has a capacity not exceeding thirty (30) pounds of dry clothes and which uses a non-combustible and non-flamable cleaning fluid. (874)

SELF-SERVICE LAUNDRY: A business establishment equipped with customer operated automatic washing machines having a capacity per unit not exceeding ten (10) pounds of dry clothing.

SET-BACK: The minimum horizontal distance between the street line and the front line of the building or any projection, except as provided for in Section 17. (447)

STREET: A thoroughfare which affords principal means of access to abutting property.

STRUCTURE: Anything constructed or erected, the use of which requires more or less permanent location on the land, or attached to something having a permanent location on the land.

STRUCTURAL ALTERATIONS: Any change, except for repair or replacement, in the supporting members of a building, such as bearing walls, columns, beams or girders.

YARD: An open space on the same lot with a building, unoccupied and unobstructed from the ground upward, except as otherwise provided herein.

YARD, FRONT: An area between the front property line (either street or bulkhead of any waterway) and the front line of any main or accessory building, measured at its least dimension and extending from one side yard to the other, unoccupied, except as provided for in Section 17. (447)

YARD, REAR: An area extending across the full

width of the lot between the rear line of any main or accessory building and the rear line of the lot and measured at its least dimension, unoccupied, except as provided for in Section 17. (447)

YARD, SIDE: An area between a main or accessory building and the side line of the lot and extending from the street line to the rear yard, measured at its least dimension, unoccupied, except as provided for in Section 17. (447)

SECTION 2.

DISTRICTS

In order to regulate and restrict the erection, reconstruction, alteration, location and use of buildings, structures, land and water, for trade, industry, residence, or other purposes, and the location thereof, and to regulate the size of buildings and other structures hereafter erected or altered, to regulate and determine the size and dimensions of yards, courts and other open spaces and to regulate and limit the percentage of lot that may be occupied and the density of population, the City of Miami Beach, Florida, is hereby divided into use and area districts as follows: (572)

Use Districts

(518)

1. RAA, RA, RB, and RC Estate Districts.
2. RD Single-Family District.

3. RDD Modified Single-Family District.

4. RDE Restricted Multiple-Family District.

5. RE Multiple-Family District.

5½. REE Multiple-level Automobile Parking Garages.

5a. BAAA.

6. BAA, BA, BB, BC, BD, BE, BF, and BG Business Districts.

7. Cabana and Swimming-Pool District. (841)

8. Two-Story Cabana District. (855)

Area Districts

Area Districts as hereinafter set forth. (518)

The City of Miami Beach, Florida, is hereby divided into use and area districts aforesaid, and the boundaries of such districts are shown on the use and area maps attached hereto, which together with the legends, words, figures, letters, symbols and other explanatory matter thereon, shall be made parts of this ordinance as if the matters and information set forth thereon were all fully described herein.

This ordinance shall be known as the "Zoning Ordinance of Miami Beach, Florida," and the maps hereto attached designated as the "District Maps."

No building shall be erected, constructed, reconstructed or structurally altered, nor shall any building or land be used for any purpose other than the use permitted in the Use District in which such building or land is located.

No lot area shall be so reduced or diminished that the yards or other spaces shall be smaller than prescribed by this ordinance, nor shall the density of population be increased in any manner except in conformity with the area regulations herein established, and shown on the Area Map.

Every building hereafter erected, constructed, reconstructed or structurally altered shall be located on a lot as herein defined, and in no case shall there be more than one building on one lot except hereinafter provided for.

SECTION 3.

USE REGULATIONS

Estate Districts

In the "RAA", "RA", "RB" and "RC" Estate Districts no building or land shall be used and no building shall hereafter be erected, constructed, reconstructed or structurally altered which is designed, arranged or intended to be occupied or used for any purpose other than a single-family residence, together with its accessory buildings, and in accord with the area provisions as hereinafter defined, excepting for one or more of the following uses:

1. Parks, playgrounds, automobile parking areas, or municipal buildings, owned and operated by the City of Miami Beach, provided that no automobile parking area so owned and operated by said City shall be located at a distance greater than 350 feet from a Business District. (829)

SECTION 4.

USE REGULATIONS

Single-Family District

In the "RD" Single-Family District no building or land shall be used and no building shall be hereafter erected, constructed, reconstructed or structurally altered which is designed, arranged or intended to be used or occupied for any purpose unless otherwise provided for, excepting for one or more of the following uses:

1. Any use permitted in the "RC" Estate District.
2. Single-family dwellings.
3. Golf Courses.
4. Accessory buildings, including a private garage.

SECTION 4-A.

USE REGULATIONS

Modified Single-Family District
(385)

In the "RDD" Modified Single-Family District no building or land shall be used and no building shall be hereafter erected, constructed, reconstructed or structurally altered which is designed, arranged or intended to be used or occupied for any purpose unless otherwise provided for, excepting for one or more of the following uses:

1. Any use permitted in the "RD" Single-Family District.
2. Two-family dwellings.

SECTION 4-B.

USE REGULATIONS

Restricted Multiple-Family District (518)

In the "RDE" Restricted Multiple-Family District no building or land shall be used and no building shall hereafter be erected, constructed, reconstructed or structurally altered which is designed, arranged, or intended to be used or occupied for any purpose unless otherwise provided for, excepting for one or more of the following uses:

1. Any use permitted in the "RDD" Modified Single-Family District.
2. Apartment buildings containing not more than four (4) single-family housekeeping units.
3. Bungalow or House Courts.

SECTION 5.

USE REGULATIONS

Multiple-Family District

In the "RE" Multiple-Family District, no building or land shall be used and no building shall be hereafter erected, constructed, reconstructed or structurally altered which is designed, arranged or intended to be used for any purpose, unless otherwise provided for in this ordinance, except for one or more of the following uses:

1. Any use permitted in the "RDE" Restricted Multiple-Family District. (518)

2. Multiple-family dwellings or apartments in accord with the area provisions hereinafter defined, and accessory buildings.

3. Hotels.

4. Hotels consisting of one hundred (100) or more guest rooms may contain the following service facilities, to-wit: barber shops, beauty shops, tobacco, magazine, newspaper and drug sundry shops, and valet and massage service utilities, provided that said service facilities shall be located and conducted entirely within said hotel building in such manner that no sign, advertisement or other appearance or indication of the existence of such service facility, nor any activity of whatsoever nature connected therewith shall be visible at any time or in any manner from any public street, avenue, walk or other public way, and such service facility shall not be accessible to patrons thereof directly from a public street, avenue, walk or other public thoroughfare nor indirectly by means of any vestibule, foyer, entry-way or room unless such vestibule, foyer, entry-way or room is accessible only from the main entrance and main lobby of the hotel as such entrance or lobby has been designated on plans for the construction or alteration of said hotel building filed with and approved by the Chief Building Inspector, and the door of any emergency exit provided for such service facility shall be identified as such exit door by words or letters on the interior thereof only, and such exit shall be kept closed at all times except for emergency use and the door shall be so constructed, equipped

and fitted that no entry into such service facility can be obtained by opening it from the exterior thereof; and provided further that such service facility may be accessible to patrons thereof from a patio, yard, court or other open area adjoining the hotel building where such area is enclosed on the side or sides abutting or visible from a public street, avenue or thoroughfare, by an opaque wall containing no facilities for entrance into such open area from the exterior of the wall, and any emergency exit door which may be provided in such wall shall be identified as such exit by words or letters on the interior of the exit door only, and such exit door shall not be visible from any public street, way or thoroughfare, and such exit door or doors shall be kept closed and locked at all times except in case of emergency and shall be so constructed and equipped that entry into said open area cannot be obtained through said exit by opening the door from the exterior thereof; and provided further that compliance with all requirements, restrictions and conditions herein provided have been certified to by the Chief Building Inspector and that said requirements, restrictions and conditions are maintained at all times; and provided further that proof to the satisfaction of the City Council of the failure by the owner, manager or person in control or custody of the service facility or his or its agents or employees to comply with conditions as hereinabove set forth for the use of said premises shall be sufficient cause for the revocation by the City Council of the license or permit theretofore issued for the said service facility or facilities; and provided further that in addition to the penalties provided for in this ordinance for the violation thereof, the City Council may,

in its own discretion, upon the conviction of any person, firm or corporation for the violation of this provision, revoke the license or permit held by the said person, firm or corporation for the service facility herein provided for. (985)

5. Private clubs, only upon approval and permit by the City Council of the City of Miami Beach. (389)

6. Apartment hotels. Provision for exterior appearances to be the same as provided in item No. 4 for Hotels. (518)

7. Miniature golf courses. (518)

8. Public Schools. (433) (518)

9. Accessory uses for tenants only, provided that where dining rooms, restaurants, coffee shops and other places where food or beverages are served, are operated as accessory uses hereunder, such rooms or places shall be entered only from within the building in the same manner and subject to the same requirements, restrictions and conditions as hereinabove provided for service facilities in hotels with one hundred (100) or more guest rooms, and no sign, advertisement or other appearance or indication of the existence of such accessory use or uses shall be visible at any time or in any manner from any public street, avenue, walk or other public way. (985)

10. Telephone exchanges, only upon approval and permit by the City Council of the City of Miami Beach. (434) (518)

11. Parking lots, only upon approval and permit of the City Council of the City of Miami Beach, Florida, and

in no case permits to be issued for more than one year. (455) (518)

12. Public Buildings and Public Utility Buildings, only upon approval and permit by the City Council of the City of Miami Beach. (491) (518)
13. Private Schools, only upon approval and permit by the City Council of the City of Miami Beach. (788)
14. Lodge Halls. (909)
15. Churches and synagogues. (930)

SECTION 5½

USE REGULATIONS

"REE" Multiple-Family District.

In the "REE" Multiple-Family District no building or land shall be used and no building shall be hereafter erected, constructed, reconstructed, or structually altered, which is designed, arranged or intended to be used for any purpose unless otherwise provided for in this ordinance except for one or more of the following uses:

1. Any use permitted in the "RE" Multiple-Family District.
2. Multiple-level Automobile Parking Garages, only upon approval and permit by the City Council of the City of Miami Beach, Florida, after a public hearing at which due consideration shall be given to the effect upon traffic of the proposed use and then only if the construction and use of said parking garage shall be subject to the following conditions and restrictions:

a. That the building shall be fully enclosed and shall conform in outward appearance to that of other buildings in the area;

b. That all service facilities shall be so arranged as not to be visible from the street;

c. That no exterior sign other than an identification sign shall be permitted, the location design and size of which shall be approved by the City Council;

d. That the services rendered shall be restricted to the parking, washing and greasing of cars, and the supplying of gasoline, oil, water and air to such vehicles. (973)

SECTION 5-A

USE REGULATIONS

"BAAA" Business District (381)

In the "BAAA" Modified Business District, no building or land shall be used and no building shall be hereafter erected, constructed, reconstructed or structually altered which is designed, arranged, or intended to be used for any purpose, unless otherwise provided for in this ordinance, except for one or more of the following uses:

1. Any use permitted in the "RE" Multiple-Family District.
2. Banks.
3. Modiste, wearing apparel, furriers.
4. Millinery shops.

5. Office, including brokerage houses.
6. Interior decorating, costuming, draperies.
7. Antique shops.
8. Jewelry stores.
9. Furniture stores.
10. (434) (Item eliminated)
11. Confectionery and ice cream stores.
12. Drug stores.
13. Stationery stores.
14. Shoe stores.
15. Sporting goods stores.
16. Luggage shops.
17. Sales and show rooms.
18. Hotels or Apartment Houses with fifty (50) or more guest rooms, may contain or erect in conjunction as accessory buildings, business establishments of the "BAA" classification.
19. (788) (Item eliminated)
20. Professional Offices. (572)

or other similar enterprises or businesses which are not more obnoxious or detrimental to the welfare of the particular community than the enterprises or businesses above enumerated, provided that this shall not be interpreted to include bars or bar-rooms, or restaurants, except in conjunction with Hotels or Apartment Houses of fifty (50) or more guest rooms.

SECTION 6

USE REGULATIONS

"BAA" Business District

In the "BAA" Business District no building or land shall be used and no building shall be hereafter erected, constructed, reconstructed or structurally altered which is designed, arranged or intended to be occupied or used for any purpose, unless otherwise provided for in this ordinance, excepting for one or more of the following uses:

1. Any use permitted in the "BAAA" Business District. (427)
2. Barber shops. (525)
3. Restaurants. (525)
4. Cabarets. (936) (909)
5. Telegraph stations. (525)
6. Photograph galleries. (525)
7. Post Offices. (525)
8. Theatres and motion picture houses. (525)
9. Beauty parlors. (525)
10. Music stores and radio stores. (525)
11. Bathing casinos. (525)
12. Hardware stores. (525)
13. Storage of motor cars on the second floor and above providing access for cars is had through a public alley and not otherwise; only upon approval and permit by

the City Council of the City of Miami Beach. (437) (525)

or other similar enterprises or businesses, which are not more obnoxious or detrimental to the welfare of the particular community than the enterprises or businesses herein enumerated.

SECTION 7

USE REGULATIONS

"BA" Business District

In the "BA" Business District no building or land shall be used and no building shall be hereafter erected, constructed, reconstructed or structurally altered which is designed, arranged or intended to be occupied or used for any purpose, unless otherwise provided for in this ordinance, excepting for one or more of the following uses:

1. Any use permitted in the "BAA" Business District.
2. Grocery stores.
3. Meat markets (except the handling of live poultry).
4. Auction Sales Rooms, Galleries or Houses, provided that passageways, corridors, aisles or other facilities for public entrance to or exit from said establishment shall, for the purpose of this ordinance, be deemed a part of said establishment; and provided, further, that no signs, displays or advertising of any nature in connection with said establishment shall be located on any land or building where the operation of the business is not permitted by this ordinance. (979)

5. Mortuaries, only upon approval and permit of the City Council of the City of Miami Beach.

6. Night Clubs, only upon approval and permit by the City Council of the City of Miami Beach.

7. Locksmith shops, sharpening and grinding shops.

8. Shoe repairing shops, only upon special permit of the City Council of the City of Miami Beach.

9. Boats—Charter, Livery, and For-Rent, upon approval and permit of the City Council of the City of Miami Beach.

10. Self-service Laundries: Provided only domestic type dryers, having a capacity per unit not exceeding 32 pounds of dry clothing, are used, and the machines shall be screened from the street by a reception room, office space, or other suitable means, so that the machines shall not be in view of the public. (874) (902)

11. Bowling Alleys in sound-proofed air-conditioned rooms on the second floor of any building. (927)

or any other similar enterprises or businesses, which are not more obnoxious or detrimental to the welfare of the particular community than the enterprises or businesses herein enumerated.

SECTION 8

USE REGULATIONS

"BB" Business District

In the "BB" Business District no building or land shall be used and no building shall be hereafter erected, con-

structed, reconstructed, or structurally altered which is designed, arranged or intended to be occupied or used for any purpose, unless otherwise provided for in this ordinance, excepting for one or more of the following uses:

1. Any use permitted in the "BA" Business District.
2. (Item eliminated) (427)
3. Public storage garages.
4. Pressing clubs.
5. Storage warehouses.
6. Conservatories.
7. Printing shops.
8. Retail plumbing stores and shops.
9. Service Stations, only upon the approval and permit by the City Council of Miami Beach, Florida.
10. Awning stores.
11. Employment agencies.
12. Retail bakeries doing baking on the premises, provided such retail bakeries comply with the following requirements:

    a. Oven shall be limited to either two Blodgett ovens, or one revolving oven not to exceed sixteen pans capacity, or equivalent;

    b. Adjoining properties shall be safeguarded and protected from obnoxious exhaust fan noises and odors;

    c. All machinery shall be entirely confined within the main structure;

d. Operation shall be limited to those hours between 6:00 A. M. and 8:00 P. M. (516) (976)

13. Retail electric and repair shops.

14. Fish markets, only upon approval and permit of the City Council of Miami Beach, Florida. (306-333)

16. Bowling alleys in air conditioned and sound proofed rooms, only upon approval and permit of the City Council of Miami Beach, Florida. (842)

17. Automatic service restaurants where service is provided for at tables and/or automobiles on private property without transporting food or drinks by waiters, waitresses or carhops from the kitchen or place of preparation to the customers, only upon approval and permit of the City Council of the City of Miami Beach, Florida. (926)

or any other similar enterprises or businesses, which are not more obnoxious or detrimental to the welfare of the particular community than the enterprises or businesses herein enumerated.

SECTION 9

USE REGULATIONS

"BC" Business District

In the "BC" Business District no building or land shall be used and no building shall be hereafter erected, constructed, reconstructed, or structurally altered which is designed, arranged or intended to be used or occupied for any purpose, unless otherwise provided for in this ordinance, excepting for one or more of the following uses:

1. Any use permited in the "BB" Business District.
2. Garages for mechanical service.
3. (Item deleted) (843)
4. Tinsmiths, roofers or plasterers.
5. Laundries: including self-service laundries. (874)
6. Dry cleaning plants and dyeing establishments.
7. Dance Halls.
8. Billiard parlors.
9. (Item eliminated) (428)
10. Painting and decorating shops.
11. Cabinet making, carpentry.
12. Wholesale salesrooms and storage rooms.
13. Amusement enterprises, which shall include bowling alleys, boxball alleys, skee-ball alleys, shooting galleries, games and devices such as ball throwing at figures, ball rolling, game racks, doll racks, knife racks, hoop throwing and similar amusements, and which also shall include any place of business, the predominant purpose of which is to furnish amusement in return for anything of value and any place of business in which there are located more than five (5) games and/or devices of skill or amusement regardless of the nature of the predominant business.
14. Cigar and cigarette making.
15. Artificial flower manufacturing.
16. Leather goods manufacture, excluding tanning.
17. Metal working shops.

18. Bottling beverages.
19. Bakeries.
20. Barbecue stands.
21. Contractors plants and storage yards, providing the area used is enclosed by a building or by a masonry wall not less than six (6) feet in height. (687)
22. (Item eliminated) (625)
23. Pawn shops.

or other similar enterprises or businesses, which are not more obnoxious or detrimental to the welfare of the particular community than the enterprises or businesses herein enumerated.

SECTION 10

USE REGULATIONS

"BD" Business District

In "BD" Business District no building or land shall be used and no building shall be hereafter erected, constructed, reconstructed or structurally altered which is designed, arranged or intended to be used or occupied for any purpose, unless otherwise provided for in this ordinance, excepting for one or more of the following uses:

1. Any use permitted in the "BC" Business District.
2. Boat or yacht storage and repair.
3. Building material storage yards.
4. Cast or art stone manufacture.

5. Concrete Block Manufacture.
6. Novelty works.
7. Marine warehouses.
8. Machine shops.
9. Boat slips.
10. Ship chandlery.
11. Blacksmith, gas, steam fitting shops.

or other similar enterprises or businesses, which are not more obnoxious or detrimental to the welfare of the particular community than the enterprises or businesses herein enumerated. All the above businesses to be conducted within buildings or within areas enclosed by masonry walls not less than six (6) feet in height.

SECTION 11

USE REGULATIONS

"BE" Business District

In the "BE" Business District no building or land shall be used and no building shall be hereafter erected, constructed, reconstructed, or structurally altered, which is designed, arranged, or intended to be occupied or used for any purpose, unless otherwise provided for in this ordinance, excepting for one or more of the following uses:

1. Any use permitted in the "BD" Business District.
2. Oil and/or gasoline storage tanks, subject to approval and permit of the City Council.

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3. Live poultry markets and/or slaughtering of poultry. (306)

or other similar enterprises or businesses, which are not more obnoxious or detrimental to the welfare of the particular community than the enterprises or businesses herein enumerated. All of the above businesses to be conducted within buildings or within areas enclosed by masonry walls not less than six (6) feet in height.

SECTION 12

USE REGULATIONS

"BF" Business District

In the "BF" Business District no building or land shall be used and no building shall be hereafter erected, constructed, reconstructed, or structurally altered which is designed, arranged or intended to be used or occupied for any purpose, unless otherwise provided for in this ordinance, excepting for one or more of the following uses:

1. Any use permitted in the "BE" Business District.
2. Ship yards and dry docks.
3. Oil and/or gasoline storage tanks.
4. Seaplane base and service center for land planes and sea planes to be primarily used for the service of locally owned and transient aircraft, and to be operated only during daylight hours, such base and service center to be equipped with a single landing strip running in a southeasterly-northwesterly direction, with a traffic pattern so arranged and controlled as

to require each aircraft in taking off to ascend to an altitude of not less than 1,000 feet prior to passage over any building or structure located within the City of Miami Beach, and so that, in a southeasterly take-off the aircraft, when reaching 1,000 feet altitude, will make a right hand turn and in making a northwesterly take-off, the aircraft, within the limits of the landing strip, will not be in any way over any portion of the City of Miami Beach, such base and service center not to be operated as a commercial airline field or anything similar thereto but to be designed primarily for the use of private owners of aircraft and limited entirely to pilots who have a Civil Aeronautics Authority private certificate or better and such base and service center to be equipped with a control tower operated by a certificated Civil Aeronautics Authority control tower operator which shall control all incoming and outgoing traffic and a service manager vested with authority to suspend the license of any pilot guilty of violating flying rules and an inspector vested with authority to ground any plane that is considered unfit to fly. No student instruction shall be permitted in connection with such seaplane base and service center unless all take-offs and landings in connection therewith shall be at least two miles from any residence located within the City of Miami Beach. Such seaplane base and service center shall be equipped with facilities for handling aircraft, including fueling, of such type as shall provide maximum safety and shall reduce hazards to a minimum, such seaplane base and service center to be operated and maintained so that at all times at least ninety per cent of the aircraft operating in connection therewith shall be privately owned and of low horse-power. (804)

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5. Hazardous industries only upon approval and permit by the City Council of Miami Beach.

6. Any other use, trade or industry which is not likely to become objectionable by reason of the emission of dangerous, unwholesome, foul, nauseous or offensive gases, odors, fumes or other discharges.

SECTION 13

USE REGULATIONS

"BG" Business District

In the "BG" Business District no building or land shall be used and no building shall be hereafter erected, constructed, reconstructed or structurally altered which is designed, arranged or intended to be used or occupied for any purpose, unless otherwise provided for in this ordinance, except for the following use:

1. Unrestricted.

SECTION 13A

USE REGULATIONS

"Cabana and Swimming-pool" District

In the "Cabana and Swimming-pool District" no building or land shall be used, and no building shall hereafter be erected, constructed, reconstructed, or structurally altered, which is designed, arranged or intended to be used or occupied for any purpose, except for one or more of the following uses:

1. Cabanas.
2. Swimming-pool and appurtenances.
3. Dining Terraces.

Provided that such buildings shall not exceed one story in height, nor in any event shall the height of such building be in excess of eighteen (18) feet above mean low water, and no canvas or other temporary construction shall be permitted on the roofs of such buildings.

SECTION 13B

USE REGULATIONS

"Two-Story Cabana District"

In the "Two-Story Cabana District" no building or land shall be used and no building shall hereafter be erected, constructed, reconstructed, or structurally altered which is designed, arranged or intended to be used for any purpose, except for one or more of the following uses:

1. Cabanas.
2. Swimming-pool and appurtenances.
3. Dining Terraces.
4. Parks owned and operated by the City of Miami Beach.

Provided that cabanas shall not exceed two stories in height nor in any event shall the height of any cabana be in excess of twenty-eight (28) feet above mean low water, and provided that no building or structure, other than cabanas, shall exceed one story in height and in no event

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shall the height of such building or structure, other than cabanas, be in excess of eighteen (18) feet above mean low water, and no canvas or other temporary construction shall be permitted on the roof of any building.

SECTION 14

NON-CONFORMING USES

The lawful use of land existing at the time of the passage of this ordinance or an amendment thereto, although such use does not conform to the provisions hereof, may be continued; but if such non-conforming use is discontinued, any further use of said land shall be in conformity with the provisions of this ordinance.

The lawful use of the building existing at the time of the passage of this ordinance or of an amendment thereto may be continued, although such use does not conform with the provisions hereof, and such use may be extended throughout the building, provided no structural alterations, except those required by law or ordinance, or ordered by an authorized officer to assure the safety of the building, are made therein. If no structural alterations are made, a non-conforming use of the building may be changed to another non-conforming use of a higher restricted classification.

The foregoing provisions shall also apply to non-conforming uses in districts hereafter changed.

Nothing in this ordinance shall be taken to prevent the restoration of a building destroyed to the extent of not more than fifty (50) percent of its reasonable value by

fire, explosion or other casualty, or act of God, or the public enemy, nor the continued occupancy or use of such building after restoration.

Whenever a non-conforming use of a building has been discontinued for a period of one (1) year or more, such non-conforming uses shall not thereafter be re-established, and the future use shall be in conformity with the provisions of this ordinance; provided, however that any use of any land or bulidngs in which a non-conforming use exists as hereinabove provided, by any branch of the military service of the United States of America, during a state of war, shall not be deemed, or held to be, an abandonment, or discontinuance, of the non-conforming use thus vested in said land. (655)

SECTION 15

(447) (518)

In all Use Districts, hereinafter designated, every building hereafter erected, constructed, reconstructed or structurally altered shall provide a lot area and/or a floor area per family of not less than the following:

1. "RAA" Estate District, 40,000 sq. ft. lot area per family.

2. "RA" Estate District, 30,000 sq. ft. lot area per family.

3. "RB" Estate District, 18,000 sq. ft. lot area per family.

4. "RC" Estate District, 10,000 sq. ft. lot area per family.

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5. "RD" Single-Family District, 6,000 sq. ft. lot area per family.

6. "RDD" Modified Single-Family District, 6,000 sq. ft. of lot area per family for single family dwellings. No such dwellings shall have less than four hundred (400) sq. ft. of floor space. 5,000 sq. ft. of lot area per family for two-family dwellings. No such dwellings shall have less than four hundred (400) sq. ft. of floor area for each family unit.

7. "RDE" Restricted Multiple-Family District: (518)

a. Single-family dwellings shall provide twenty-eight hundred (2800) sq. ft. of lot area per family. No such dwelling shall have less than four hundred sq. ft. of floor area.

b. Two-family dwellings shall provide sixteen hundred (1600) sq. ft. of lot area per family; and there shall in no case be less than ten (10) feet between buildings. No such dwellings shall have less than four hundred (400) sq. ft. of floor area for each family unit.

c. Apartment buildings shall provide a floor area of not less than four hundred (400) sq. ft. within the limiting walls of any family unit.

d. Bungalow or house courts shall provide not less than twenty-eight hundred (2800) sq. ft. of lot area per family unit, and there shall be not less than ten (10) feet between buildings. No family unit shall provide less than four hundred (400) sq. ft. of floor area. There shall be an outer court with a minimum width of ten (10) feet and a minimum area of thirty (30) per cent of the gross lot area, so arranged as to provide ingress and egress to and from all units.

8. "RE" Multiple-Family District:

a. Single-family dwellings shall provide twenty-eight hundred (2800) sq. ft. of lot area per family. No such dwelling shall have less than four hundred (400) sq. ft. of area.

b. Two-family dwellings shall provide sixteen hundred (1600) sq. ft. of lot area per family and there shall in no case be less than ten (10) feet between buildings. No such dwelling shall have less than four hundred (400) sq. ft. of floor area for each family unit.

c. Multiple-Family dwellings shall provide a floor area of not less than four hundred (400) sq. ft. within the limiting walls of any family unit.

d. Bungalow or house courts shall provide a minimum of not less than twenty-eight hundred (2800) sq. ft. of lot area per family and there shall in no case be less than ten (10) feet between buildings. No unit shall provide less than four hundred (400) sq. ft. of floor area. There shall be an outer court with a minimum width of ten (10) feet and a minimum area of not less than thirty (30) percent of the gross lot area, so arranged as to provide ingress and egress to and from all units.

8a. "REE" Multiple-level Automobile Parking Garages.

9. "BAAA," "BAA," "BA." "BB," "BC," "BD." "BE," "BF" and "BG" Business Districts.

a. There shall be provided adjacent to Multiple or Single-Family occupancies to be located in Business Districts, a set-back from the side lot lines, open on at least one end to a street, alley or other equivalent permanently unoccupied space or to a yard having a width of not less than five (5) feet and permanent access to such street,

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alley or other equivalent permanently unoccupied space. Such set-back shall begin at the floor level at which such Multiple or Single-Family occupancies first occur, shall be unobstructed to the sky, except as otherwise provided for projections from buildings in the Zoning Ordinance and shall be not less than five (5) feet in width continuous for at least sixty (60) percent of the lot depth. Where courts are provided in the interior of the building and are adjacent to all of such Multiple or Single Family occupancies having an unobstructed width of not less than ten (10) feet and open full width on at least one end to a street, alley or other equivalent permanently unoccupied space, or to a yard having a width of not less than twenty (20) feet and permanent access to such street, alley or other equivalent, permanently unoccupied space, the provisions of this Sub-section relating to set-backs from the side lines shall not apply. (610)

b. Where buildings for business occupancy are set back from interior lot lines, such setback shall in no case be less than twenty-eight (28) inches and it shall be continuous on at least one end to a street or alley.

10. In all "RC" Estate Districts, every residence hereafter constructed shall provide a minimum cubic foot content of 25,000 cubic feet, exclusive of porte-cocheres, open terraces and/or similar features. (563)

11. In all "RD" Single Family Districts, each residence hereafter constructed shall provide a minimum cubic foot content of 16,000 cubic feet, exclusive of porte-cocheres, open terraces and/or similar features. (563)

SECTION 16

AREA REGULATIONS

In all Area Districts, hereinafter designated, there shall be front, rear and side yards provided of not less dimensions than specified as follows:

DISTRICT NO. 1. No restrictions.

DISTRICT NO. 2. There shall be a front yard having a depth of not less than one hundred (100) feet when measured from any waterway, bay or ocean. There shall be a rear yard having a depth of not less than fifty (50) feet when measured from the street line. There shall be a side yard having a width of not less than five (5) feet on either side of a building.

DISTRICT NO. 3. There shall be a front yard having a depth of not less than sixty-five (65) feet when measured from any waterway, bay or ocean. There shall be a rear yard having a depth of not less than twenty-five (25) feet when measured from the street line. There shall be a side yard having a width of not less than five (5) feet on either side of a building.

DISTRICT NO. 4. There shall be a front yard having a depth of not less than sixty-five (65) feet when measured from any waterway, bay or ocean. There shall be a rear yard having a depth of not less than ten (10) feet when measured from the street line. There shall be a side yard having a width of not less than five (5) feet on either side of a building.

DISTRICT NO. 5. There shall be a front yard having a depth of not less than forty (40) feet when measured from any waterway, bay or ocean. There shall be a rear yard having a depth of not less than ten (10) feet when measured from the street line. There shall be a side yard having a width of not less than five (5) feet on either side of a building.

DISTRICT NO. 6. There shall be a front yard having a depth of not less than forty (40) feet when measured from any waterway, bay or ocean. There shall be a rear yard having a depth of not less than thirty (30) feet when measured from the street line. There shall be a side yard having a width of not less than five (5) feet on either side of a building.

DISTRICT NO. 7. There shall be a front yard having a depth of not less than forty (40) feet when measured from any waterway, bay or ocean. There shall be a rear yard having a depth of not less than twenty-five (25) feet when measured from the street line. There shall be a side yard having a width of not less than five (5) feet on either side of a building.

DISTRICT NO. 8. There shall be a front yard having a depth of not less than forty (40) feet when measured from any waterway, bay or ocean. There shall be a rear yard having a depth of not less than twenty (20) feet when measured from the street line. There shall be a side yard having a width of not less than five (5) feet on either side of a building.

DISTRICT NO. 9. There shall be a front yard having a depth of not less than fifteen (15) feet when measured

from any waterway, bay or ocean. There shall be a rear yard having a depth of not less than ten (10) feet when measured from the street line. There shall be a side yard having a width of not less than five (5) feet on either side of a building.

DISTRICT NO. 10. There shall be a front yard having a depth of not less than twenty-five (25) feet when measured from any waterway, bay or ocean. There shall be a rear yard having a depth of not less than fifteen (15) feet when measured from the street line. There shall be a side yard having a width of not less than five (5) feet on either side of a building.

DISTRICT NO. 11. There shall be a front yard having a depth of not less than forty (40) feet. There shall be a rear yard having a depth of not less than five (5) feet. There shall be a side yard having a width of not less than five (5) feet on either side of a building.

DISTRICT NO. 12. There shall be a front yard having a depth of not less than thirty (30) feet. There shall be a rear yard having a depth of not less than five (5) feet. There shall be a side yard having a width of not less than five (5) feet on either side of a building.

DISTRICT NO. 13. There shall be a front yard having a depth of not less than twenty-five (25) feet. There shall be a rear yard having a depth of not less than five (5) feet. There shall be a side yard having a width of not less than five (5) feet on either side of a building. Buildings on lots fronting or abutting on the southern side of Collins Canal from the alley east of Alton Road to the alley west of Meridian Avenue will not require a front yard nor will they require a side yard along the canal.

DISTRICT NO. 14. There shall be a front yard having a depth of not less than twenty (20) feet. There shall be a rear yard having a depth of not less than five (5) feet. There shall be a side yard having a width of not less than five (5) feet on either side of a building.

DISTRICT NO. 15. There shall be a front yard having a depth of not less than fifteen (15) feet on lots facing Collins Avenue, Indian Creek Drive or on the ocean. On lots facing on the streets connecting said Avenue and Drive this front yard shall have a depth of not less than five (5) feet. There shall be a rear yard having a depth of not less than five (5) feet. There shall be a side yard having a width of not less than five (5) feet on either side of a building.

DISTRICT NO. 16. There shall be a front yard having a depth of not less than fifteen (15) feet. There shall be a rear yard having a depth of not less than five (5) feet. There shall be a side yard having a width of not less than five (5) feet on either side of a building.

DISTRICT NO. 17. There shall be a front yard having a depth of not less than ten (10) feet. There shall be a rear yard having a depth of not less than five (5) feet. There shall be a side yard having a width of not less than five (5) feet on either side of a building.

Provided, however, that in business districts corner lots shall not require a side yard on the side of the lot abutting on the street side. (425)

In the area lying between Collins Avenue and Miami Beach Drive and between 24th and 26th Streets, both Collins

Avenue and Miami Beach Drive shall be considered as front. (382)

DISTRICT NO. 18. There shall be a front yard having a depth of not less than five (5) feet.

DISTRICT NO. 19. There shall be a rear yard having a depth of not less than five (5) feet; provided, however, on a lot, the rear of which abuts on a street, waterway or alley, no rear yard will be required, and provided further that where any building is to be constructed allowing no rear yard, adequate provisions shall be made within the building for the storage and handling of garbage cans and refuse. Lots zoned for business uses which adjoin lots zoned for residential use shall provide a five (5) foot side yard on the side adjoining the residential lot. On the West side of Collins Avenue between 19th Street and 24th Street, and on the East Side of Collins Avenue between 19th Street and 21st Street, there shall be a setback from Collins Avenue having a depth of not less than ten (10) feet. On the north side of 71st Street between Indian Creek and that certain alley running North and South through Block 6 of Normandy Beach South, a subdivision according to the Plat thereof recorded in Plat Book 21, at page 54, of the Public Records of Dade County, Florida, and on the South Side of 71st Street between Indian Creek and a line running North and South through the middle of Block 11 of said Subdivision, there shall be a setback from 71st Street of not less than five (5) feet, and 71st Street shall be considered the front of the lots in said areas. (812) (957)

DISTRICT NO. 20. There shall be a front yard having a depth of not less than thirty (30) feet measured from

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any waterway, bay or ocean. There shall be a rear yard having a depth of not less than thirty (30) feet measured from the street line. There shall be a side yard having a width of not less than ten (10) feet on either side of a building.

DISTRICT NO. 21. There shall be a front yard having a depth of not less than thirty (30) feet when measured from any waterway, bay or ocean. There shall be a rear yard having a depth of not less than twenty (20) feet when measured from the street line. There shall be a side yard having a width of not less than ten (10) feet on either side of a building.

DISTRICT NO. 22. There shall be a front yard having a depth of not less than twenty (20) feet. There shall be a rear yard having a depth of not less than five (5) feet. There shall be a side yard having a width of not less than ten (10) feet on either side of a building.

DISTRICT NO. 23. There shall be a front yard having a depth of not less than ten (10) feet. There shall be a rear yard having a depth of not less than five (5) feet. There shall be a side yard having a width of not less than ten (10) feet on either side of a building.

DISTRICT NO. 24. There shall be a front yard having a depth of not less than five (5) feet. There shall be a rear yard having a depth of not less than five (5) feet. There shall be a side yard having a width of not less than five (5) feet on either side of a building.

DISTRICT NO. 25. There shall be a front yard having a depth of not less than fifty (50) feet. There shall be a

rear yard having a depth of not less than five (5) feet. There shall be a side yard having a width of not less than five (5) feet on either side of a building.

DISTRICT NO. 26. There shall be a front yard facing Pine Tree Drive having a depth of not less than twenty-five (25) feet. There shall be a rear yard having a depth of not less than twenty (20) feet, and there shall be a side yard having a width of not less than five (5) feet on either side of a building. (348)

DISTRICT NO. 27. There shall be a front yard having a depth of not less than twenty-five (25) feet. There shall be a rear yard having a depth of not less than five (5) feet. There shall be a side yard having a width of not less than seven and one-half (7½) feet on either side of a building (348)

DISTRICT NO. 28. There shall be a front yard having a depth of not less than five (5) feet. There shall be a side yard having a width of not less than five (5) feet on either side of a building, provided, however, that corner lots shall not require a side yard on the side of the lot abutting on the side street. No rear yard will be required in this district, provided, however, that arrangements satsifactory to the Building Inspector shall be provided within the lot area for the storage of garbage and trash. (352)

DISTRICT NO. 29. There shall be a front yard having a depth of not less than twenty-five (25) feet when measured from any waterway, bay or ocean. There shall be a rear yard having a depth of not less than ten (10) feet. There shall be a side yard on each side of a building having a width of not less than ten (10) feet when measured

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from any street line and having a width of not less than five (5) feet when measured from any adjoining lot. (373)

DISTRICT NO. 30. There shall be a front yard having a depth of not less than ten (10) feet when measured from any street line. There shall be a rear yard having a depth of not less than five (5) feet. There shall be a side yard on each side of a building having a width of not less than ten (10) feet when measured from any street line and having a width of not less than five (5) feet when measured from any adjoining lot line. (398)

DISTRICT NO. 31. There shall be a front yard facing Pine Tree Drive, having a depth of not less than twenty-five (25) feet. There shall be a rear yard having a depth of not less than ten (10) feet and there shall be a side yard on each side of a building having a width of not less than ten (10) feet when measured from any street line and having a width of not less than five (5) feet when measured from any adjoining lot line. (398)

DISTRICT NO. 32. There shall be a front yard having a depth of not less than forty (40) feet, when measured from any waterway, bay or ocean. There shall be a rear yard having a depth of not less than twenty (20) feet, when measured from the street line. There shall be a side yard having a width of not less than ten (10) feet on either side of a building. (435)

DISTRICT NO. 33. There shall be a front yard having a depth of not less than fifteen (15) feet. There shall be a rear yard having a depth of not less than five (5) feet and there shall be a side yard having a width of not less than seven and one-half (7½) feet on either side of a building. (481)

DISTRICT NO. 34. There shall be a front yard having a depth of not less than twenty (20) feet and there shall be a rear yard having a depth of not less than ten (10) feet. There shall be a side yard having a width of not less than ten (10) feet on either side of a building. (489)

DISTRICT NO. 35. There shall be a front yard having a depth of not less than fifty (50) feet. There shall be a rear yard having a depth of not less than ten (10) feet. There shall be a side yard having a width of not less than ten (10) feet on either side of a building. (489)

DISTRICT NO. 36. There shall be a front yard having a depth of not less than fifteen (15) feet. There shall be a rear yard having a depth of not less than five (5) feet. There shall be a side yard having a width of not less than five (5) feet on either side of a building, provided, however, that corner lots shall not require a side yard on the side of the lot abutting on the side street. (514)

DISTRICT NO. 37. There shall be a yard having a depth of not less than twenty (20) feet when measured from any waterway, bay or ocean. There shall be a yard having a depth of not less than twenty (20) feet when measured from the street line. There shall be a side yard having a width of not less than five (5) feet on either side of a building. (518)

DISTRICT NO. 38. There shall be a front yard having a depth of not less than forty (40) feet, when measured from any waterway, bay or ocean. There shall be a rear yard having a depth of not less than fifty (50) feet when measured from the street line. There shall be a side yard having a width of not less than fifteen (15) feet on either side of a building. (779)

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DISTRICT NO. 39. There shall be a front yard having a depth of not less than fifteen (15) feet when measured from any waterway, bay or ocean. There shall be a rear yard having a depth of not less than ten (10) feet when measured from the street line. There shall be a side yard having a width of not less than ten (10) feet on either side of a building. (779)

DISTRICT NO. 40. There shall be a front yard having a depth of not less than one hundred and eleven (111) feet when measured from the bulkhead line as described and established by Ordinance No. 766 of the City of Miami Beach, Florida. There shall be a rear yard having a depth of not less than ten (10) feet when measured from the street line. There shall be a side yard having a width of not less than five (5) feet on either side of a building. (834)

DISTRICT NO. 41. There shall be a front yard having a depth of not less than 75 feet when measured from the bulkhead line described and established by Ordinance No. 832 of the City of Miami Beach, Florida. Adequate provisions shall be made within the building for the storage and handling of garbage cans and refuse. On the east side of Collins Avenue between 22nd Street and 24th Street there shall be a setback from Collins Avenue having a depth of not less than ten (10) feet. (841) (957)

DISTRICT NO. 42. There shall be a front yard having a depth of not less than 90 feet when measured from the bulkhead line described and established by Ordinance No. 832 of the City of Miami Beach, Florida. There shall be a rear yard having a depth of not less than five (5) feet and there shall be a side yard having a width of not less than five (5) feet on either side of a building. Provided,

however, that in this area district no side yard shall be required where accessory buildings are constructed pursuant to the provisions of Sub-paragraph "h" of Subsection 3 of Section 17 of this Ordinance. (841) (910)

DISTRICT NO. 43. There shall be a side yard having a width of not less than five (5) feet on either side of a building. (841)

DISTRICT NO. 44. There shall be a front yard having a depth of not less than 25 feet. There shall be a rear yard having a depth of not less than 10 feet. There shall be a side yard having a width of not less than five feet on either side of a building. (851)

DISTRICT NO. 45. In this District both Collins Avenue and the Atlantic Ocean shall be considered as front.

There shall be a front yard having a depth of not less than 15 feet on lots facing Collins Avenue. There shall be a side yard having a width of not less than 5 feet on either side of a building; provided, however, that in this area district no side yard shall be required where accessory buildings are constructed pursuant to the provisions of Sub-paragraph "h" of Sub-section 3, of Section 17 of this Ordinance. There shall be a rear yard having a depth of not less than 5 feet. There shall be a front yard on lots facing the Atlantic Ocean, the eastern and western boundaries of which shall be the lines described as follows:

The Westerly boundary line shall be a line described as follows:

Beginning at a point which is on the northerly line of 33rd

Street extended easterly and 255 feet easterly of the easterly line of Collins Avenue; thence run in a northerly direction to a point on the southerly line of Lot 2, Block 19, extended easterly of the Amended Map of the Ocean Front Property of the Miami Beach Improvement Company and 253 feet easterly of the said easterly line of Collins Avenue; thence run in a northerly direction to a point on the northerly line of 34th Street extended easterly and 254 feet easterly of the said easterly line of Collins Avenue; thence run in a northerly direction to a point on the northerly line of 41st Street and 241 feet easterly of said easterly line of Collins Avenue; thence run in an easterly direction along said northerly line of 41st Street for a distance of 16 feet; thence run in a northerly direction to a point on the northerly line of 44th Street extended easterly and 221 feet easterly of said easterly line of Collins Avenue; as said Collins Avenue, Streets, Lot and Block are shown on the amended Map of the Ocean Front Property of the Miami Beach Improvement Company, recorded in Plat Book 5, at pages 7 and 8, of the Public Records of Dade County, Florida, and as said Streets are named and designated in City of Miami Beach Ordinance No. 232.

The Easterly boundary line shall be a line described as follows:

Beginning at a point which is on the northerly line of 33rd Street extended easterly and 345 feet easterly of the easterly line of Collins avenue; thence run in a northerly direction to a point on the southerly line of Lot 2, Block 19, extended easterly of the Amended Map of the Ocean Front Property of the Miami Beach Improvement Company and 343 feet easterly of the said easterly line of Collins Avenue; thence run in a northerly direction to a point on the northerly line of 34th Street extended easterly and 344

feet easterly of the said easterly line of Collins Avenue; thence run in a northerly direction to a point on the northerly line of 41st Street extended easterly and 325 feet easterly of the said easterly line of Collins Avenue; thence run in a northerly direction to a point on the northerly line of 44th Street extended easterly and 311 feet easterly of said easterly line of Collins Avenue, as said Collins Avenue, Streets, Lot and Block are shown on the Amended Map of the Ocean Front Property of the Miami Beach Improvement Company, recorded in Plat Book 5, at pages 7 and 8, of the Public Records of Dade County, Florida, and as said Streets are named and designated in City of Miami Beach Ordinance No. 232. (841) (862) (910)

DISTRICT NO. 46. There shall be a front yard having a depth of not less than fifteen (15) feet when measured from the bulkhead line of any waterway. There shall be a rear yard having a depth of not less than thirty (30) feet when measured from the street line. There shall be a side yard having a width of not less than ten (10) feet on either side of a building. (895)

DISTRICT NO. 47. There shall be a front yard having a depth of not less than fifteen (15) feet when measured from the bulkhead line on any waterway. There shall be a rear yard having a depth of not less than thirty-five (35) feet when measured from the street line. There shall be a side yard having a width of not less than ten (10) feet on either side of a building. (895)

DISTRICT NO. 48. There shall be a front yard having a depth of not less than fifteen (15) feet when measured from the bulkhead line on any waterway. There shall be a rear yard having a depth of not less than forty (40) feet

when measured from the street line. There shall be a side yard having a width of not less than ten (10) feet on either side of a building. (895)

DISTRICT NO. 49. There shall be a front yard having a depth of not less than thirty (30) feet when measured from the bulkhead line on any waterway. There shall be a rear yard having a depth of not less than sixty (60) feet when measured from the street line. There shall be a side yard having a width of not less than ten (10) feet on either side of a building. (895)

DISTRICT NO. 50. There shall be a front yard having a depth of not less than forty (40) feet when measured from the bulkhead line on any waterway. There shall be a rear yard having a depth of not less than sixty-five (65) feet when measured from the street line. There shall be a side yard having a width of not less than five (5) feet on either side of a building. (895)

Any land or premises not shown within the boundaries of any use, height or density districts within the City of Miami Beach, or which may hereafter be annexed to the City of Miami Beach, shall be considered to be the "RD" Single-Family District and Area District No. 13. (606)

SECTION 17.

GENERAL PROVISIONS

1. AREA RESTRICTIONS:

a. In the "RAA," "RA," "RB," "RC" and "RD" Single Family Districts and the "RDD" Modified Single-

Family District, accessory buildings shall not occupy in the aggregate more than thirty (30) percent of the maximum yard area.

b. Lot areas or dimensions shall not be so reduced or diminshed that the yards or open spaces shall be smaller than those provided by this ordinance, nor shall the lot area per family be reduced in any manner except in conformity with the area regulations hereby established for the District in which the building is located.

c. No dock, wharf, dolphin or structure of any kind shall be erected, constructed or reconstructed, so as to extend into Biscayne Bay, a distance greater than twenty-five (25) feet, or so as to extend into Indian Creek, a distance greater than fifteen (15) feet or so as to extend into Collins Canal a distance greater than three (3) feet or so as to extend into any other waterway in the City of Miami Beach a distance greater than five (5) feet, except that with special permission of the City Council, docks, wharves, dolphins or similar structures may extend from a business or multiple-family lot into Biscayne Bay, a distance not greater than one hundred twenty-five (125) feet. No part of any such dock, wharf, dolphin or structure shall be higher than two (2) feet above the top of the adjoining seawall or the established grade for the sea wall if none exists. (584)

d. This ordinance shall not be construed to prevent the construction of a building on any lot of record at the time of passage of this ordinance, notwithstanding that such lot may have a lesser area than is required in the particular area district in which it is situated.

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e. In the "RAA," "RA," "RB," "RC," "RD" Single-Family Districts, "RDD" Modified Single-Family District "RDE" Restricted Multiple-Family District, "REE" Multiple-level Automobile Parking Garages, and in the "RE" Multiple-Family District, no accessory building shall be constructed except concurrently with or subsequent to the construction of the main building. (518)

2. WALLS AND FENCES:

a. In the "RAA" and "RA" Estate Districts, walls may be erected, constructed, reconstructed or structurally altered, provided, however, that such wall or walls shall not exceed ten (10) feet in height above grade.

b. In the "RB" and "RC" Estate Districts, walls may be erected, constructed, reconstructed or structurally altered, providing, however, that such wall or walls shall not exceed six (6) feet in height above grade.

c. In the "RD" Single-Family District and the "RDD" Modified Single-Family District walls may be erected, constructed, reconstructed or structurally altered, provided, however, that such walls shall not exceed five (5) feet in height above grade.

d. In the area bounded on the North by the South line of Lot "A" INDIAN BEACH CORPORATION SUBDIVISION as recorded in Plat Book 8 on Page 61 of the Public Records of Dade County, Florida, on the South by the South line of FISHER'S FIRST SUBDIVISION OF ALTON BEACH as recorded in Plat Book 2 on Page 77 of the Public Records of Dade County, Florida, on the West by Collins Avenue and on the East by the Atlantic

Ocean, walls may be erected, constructed, reconstructed or structurally altered, provided, however, that such walls shall not exceed seven (7) feet in height above grade.

e. In all other districts, except as otherwise specified, walls shall not exceed five (5) feet in height above grade.

f. A wall may extend from a building or other wall to a lot line in front, rear or side yard, provided that it does not exceed in height, the restriction for that district, and provided further, that there shall be a minimum opening of three (3) feet provided in such wall or walls for access through the side yards. Openings as required above may have operative gates, not exceeding in height, that allowed for walls in that district, except as follows:

g. Ornamental entrances, fountains, rotisseries, flowerbins and similar architectural features, exceeding the wall height restriction will be permitted, provided: that no such feature shall exceed in height, the wall height restriction for that district plus three (3) feet and shall in no case exceed ten (10) feet above grade; that no such feature shall exceed in width, exclusive of supporting wall, one-half (½) the wall's height restriction for that district; that no such feature shall exceed in length at grade, the wall height restriction for that district, plus ten (10) feet; that no such feature shall exceed in length at the allowed wall height, the specified height, plus five (5) feet; that there shall be only one such feature in any front, side or rear yard, except that on lots seventy-five (75) feet or more in width, there may be two (2) entrance gates; that there shall be at least ten (10) feet between any such feature and any part of any building on the same lot, measured at right angles from the feature; that

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such features shall not restrict passage through front, rear or side yards to less than twenty-eight (28) inches in any place.

h. Hedges of living vegetation may be kept and maintained in the districts described in sub-paragraphs a, b, c, d, e, and f of Sub-section (2) of Section 17 of Ordinance No. 289, as amended, with the same limitations, however, as to height thereof, as is provided for in these said sub-paragraphs a, b, c, d, e, and f for walls in said districts, and with the further limitations of the maintenance and height thereof as is contained in sub-paragraph "g" of said sub-section (2) of said Section 17 of said Ordinance No. 289, as amended. (607)

3. PROJECTIONS INTO YARD AREAS:

a. Chimneys may project into side and rear yards a distance not to exceed twenty-four (24) inches, provided that a clear space of not less than twenty-eight (28) inches is left between such projection and the lot line adjacent. The horizontal dimension of the chimney at right angles to the projection shall not exceed six (6) feet.

b. Except as otherwise provided in Sub-paragraph "h" of this Sub-section, no steps or platforms over thirty-six (36) inches in height above grade shall extend into side, rear or front yards. Steps or platforms not exceeding thirty-six (36) inches in height may be railed, provided that such railing shall not exceed in height above grade, that specified for walls in that district, and further, that there shall be a clear, unobstructed passage of not less than twenty-eight (28) inches between such projection and the lot line adjacent. Platforms or terraces not

exceeding thirty-six (36) inches in height may extend across side and rear yards, provided that there shall be ramps or steps at least thirty-six (36) inches wide on opposite sides to provide unobstructed passage over such projections. (792)

c. Area-ways, steps to basements and similar features will be permitted in side and rear yards, providing that no part of such feature shall exceed in height, thirty-six (36) inches above grade and that the projection shall not exceed twenty-four (24) inches, and provided further that there shall be a clear, unobstructed passage of not less than twenty-eight (28) inches between such features and the lot line adjacent. Steps, extending not more than four (4) feet from the main building and not more than thirty-six (36) inches in height above grade, leading to the basement or ground floor may be constructed in the side yard on the street side of a corner lot.

d. Open-type, metal fire-escapes may project forty-eight (48) inches into side and rear yard areas, provided that the bottom run shall be counterbalanced and that when the bottom run is up there shall be at least nine (9) feet of clear headroom below it. The bottom run shall be adjacent to the building and shall be so arranged that when down, there shall be at least twenty-eight (28) inches of clear, unobstructed passage between it and the lot line adjacent.

e. Except as otherwise provided in Sub-paragraph "h" of this Sub-section, no main walls of any building shall encroach on yard areas, but architectural features such as canopies, open balconies, oriel windows, cornices, eaves, etc., may project into yards which abut interior

lot lines not more than twenty-four (24) inches, and into yards which abut on streets, alleys or waterways, not to exceed forty-eight (48) inches; provided that there shall be not less than eight (8) feet of clear headroom under any such projection. Marquees, supported from above or below or cantilevered, only for the protection of vehicular driveways at main entrances of hotels, apartment buildings and business buildings, may project into yard areas which abut on a street; provided that the projection into the yard area shall not exceed twenty (20) square feet in a horizontal plane, that the minimum clearance shall be ten (10) feet, and that the maximum over-all height shall not exceed twelve (12) feet above driveway or eighteen (18) feet above grade.

Covered pedestrian walkways, only in connection with hotels, apartment buildings and business buildings, may be erected in yard areas which abut on a street; provided that the maximum height above grade shall be nine (9) feet, that the maximum width of the roof including overhangs shall be eight (8) feet, and that the sides shall be completely open. (965)

f. Except as otherwise provided in Sub-paragraph "h" of this Sub-section, open terraces projecting into front yards shall not exceed in height two (2) feet above grade and the railing of such terrace shall in no case be more than three (3) feet above the terrace. Where necessary to provide access through the side yards, terraces shall be provided with steps or ramps and gates, not less than thirty-six (36) inches in width.

g. On lots fifty (50) feet or less in width, a porte-cochere which is not more than eighteen (18) feet in

length may project over any side or rear yard, provided, however, that such porte-cochere does not exceed one (1) story in height, that the supporting columns shall not exceed two (2) feet in any cross-sectional dimension and that it shall be open, full width both front and rear.

h. That in multiple family and business districts on lots which abut on the ocean, accessory buildings such as cabanas, swimming pools and appurtenances, dining terraces, etc., may be constructed in the yard which abuts the ocean; provided that no such building shall encroach on the side yard areas; and provided further that such buildings shall not exceed one (1) story, nor in any event shall the height of such building be in excess of eighteen (18) feet above mean low water. No canvas or other temporary construction shall be permitted on the roofs of buildings erected in a yard area under these provisions. (792)

4. MOVABLE MATERIALS:

a. In business districts no merchandise, debris, trash, garbage, lumber, bones, waste paper, or other movable materials, shall be put, placed or stored within twenty (20) feet of any private property not zoned for business use, except within a main or accessory building.

SECTION 18.

ADMINISTRATION

It shall be the duty of the Building Inspector to enforce this ordinance.

SECTION 19.

CERTIFICATE OF OCCUPANCY

a. A Certificate of Occupancy, either for the whole or a part of a new building or for alteration of an existing building, shall be applied for coincident with the application for a building permit and shall be issued within three (3) days after the erection or alteration of such building or part shall have been completed in conformity with the provisions of this ordinance.

b. A Certificate of Occupancy for the use or occupancy of vacant land, or for a change in the use of land, or for a change in the use of an existing building, shall be applied for and issued before any such land shall be occupied or used, or changed in use, and such certificate shall be issued within three (3) days after application has been made, provided such proposed use is in conformity with the provisions of this ordinance.

c. No vacant land shall be occupied or used, and no structure hereafter erected, constructed, reconstructed or structurally altered shall be used or changed in use until a Certificate of Occupancy shall have been issued by the Building Inspector.

d. A like Certificate shall be issued for the purpose of maintaining, renewing, changing or extending a non-conforming use, existing at the time of the passage of this ordinance; and such Certificate shall state that the use does not conform with the provisions of this ordinance. For the purpose of complying with this requirement, the Building Inspector shall mail such Certificate

to the occupants or owners of all such property within thirty (30) days after the passage of this ordinance.

e. A record of all Certificates of Occupancy shall be kept on file in the office of the Building Inspector, and a copy shall be furnished on request to any person having a proprietary or tenancy interest in the building or land affected.

SECTION 20.

INTERPRETATION, PURPOSE AND CONFLICT

In interpreting and applying the provisions of this ordinance they shall be held to be the minimum requirements for the promotion of the health, safety, morals or general welfare of the community. It is not intended by this ordinance to interfere with, abrogate or annul any easements, covenants or other agreements between parties, provided, however, that where this ordinance imposes a higher standard upon the use of buildings or premises, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations or by easements, covenants or agreements, the provisions of this ordinance shall control.

SECTION 21.

CHANGES AND AMENDMENTS

Upon its own initiative, or upon the petition of the owners of a majority of frontage in any area, the City Council may, after having held a public hearing following at least fifteen (15) days notice of a time, place and

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object of such hearing published in an official paper, or a paper of general circulation in said City of Miami Beach, mend, supplement, change, modify or repeal the regulations and boundaries herein established, provided, however, that no amendment shall become effective except by the favorable vote of five-sevenths (5/7) of all the members of the City Council.

The provisions relative to public hearings and official notices shall apply equally to all changes or amendments. (742)

SECTION 22.

ADJUSTMENTS, PURPOSE, JURISDICTION AND APPROVAL

A Board of Adjustment is hereby established. The word "Board" when used in this ordinance shall be construed to mean the Board of Adjustment.

The Board shall consist of five (5) members appointed by the City Council, each for a term of three (3) years.

Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this ordinance, the Board of Adjustment shall have the power in passing upon appeals, to vary or modify any regulations or provisions of such ordinance relating to the use, construction or alteration of buildings or structures, or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.

Meetings of the Board shall be held at least once monthly, or at such other times as the Board may determine, or upon call of the chairman. All meetings of the Board shall be open to the public. The Board shall adopt its own rules or procedure and keep minutes of its proceedings showing its action on each question considered. All records of the Board and its official actions shall be filed in the office of the Board and shall be a public record.

An appeal from the decision of the Administrative Offices may be taken to the Board of Adjustment by any person aggrieved, or by any officer, department or board of the City affected by such decision. The Board shall also hear and decide all matters referred to it, or upon which it is required to pass.

The Board shall prescribe by general rule, a reasonable time within which a notice of appeal shall be filed with the Board specifying the grounds thereof, and the officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the records upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certified to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril of life or property, in case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board of Adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.

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The Board shall fix a reasonable time for the hearing of the appeal taken within the time specified by its rules, give public notice thereof as well as due notice to the parties in interest, and decide same within a reasonable time. Upon the hearing, any person may appear in person or by agent or by attorney.

SECTION 23.

VALIDITY AND PENALTY

Should any section, clause or provision of this ordinance be declared by the Court to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Any person, firm or corporation who shall violate or fail to comply with any of the provisions of this ordinance shall be punished by a fine of not less than Five Dollars ($5.00), nor more than Fifty Dollars ($50.00), or be imprisoned in the City Jail for not more than Thirty (30) Days, or both, in the discretion of the Court. Each day that a violation is permitted to exist shall constitute a separate offense.

All ordinances or parts of ordinances in conflict herewith or inconsistent with the provisions of this ordinance are hereby repealed.

BE IT FURTHER ORDAINED that this ordinance shall take effect immediately after its passage, approval and posting, as provided by law.

PASSED AND ADOPTED this 3rd day of December, A. D. 1930.

(Signed) JOHN H. LEVI,
President of City Council.

ATTEST:

(Signed) C. W. TOMLINSON,
City Clerk.

(SEAL)

APPROVED BY ME this 3rd day of December, A. D. 1930.

(Signed) LOUIS F. SNEDIGAR,
Mayor.

First Reading, November 19th, 1930.

Second Reading, November 19th, 1930.

Third Reading, December 3rd, 1930.

Posted, December 18, 1930.

AND AS AMENDED BY ORDINANCES 291, 294, 300, 306, 307, 308, 328, 333, 339, 340, 341, 342, 343, 344, 345, 347, 348, 349, 350, 352, 353, 354, 355, 357, 366, 373, 374, 381, 382, 383, 385, 386, 388, 389, 390, 392, 393, 395, 396, 397, 398, 399, 408, 417, 419, 423, 425, 427, 428, 432, 433, 434, 435, 436, 437, 442, 447, 453, 455, 463, 466, 473, 474, 480, 481, 482, 487, 489, 490, 491, 492, 493, 507, 514, 515, 516, 518, 519, 522, 525, 533, 547, 554, 556, 557, 560, 561, 563, 564, 565, 569, 572, 573, 579, 584, 586, 594, 596, 597, 602, 606, 607, 610, 625, 641, 655, 672, 687, 689, 699, 730, 731, 735, 736, 742, 746, 757, 763, 769, 773, 779, 788, 792, 796, 804, 805, 808, 809, 812, 813, 819, 829, 833, 834, 841, 842, 843, 848, 851, 855, 860, 862, 872, 874, 879, 881, 895, 896, 897, 902, 905, 909, 910, 912, 926, 927, 930, 931, 934, 936, 937, 943, 947, 951, 953, 954, 957, 965, 966, 973, 976, 977, 979, 985 included herein.

Note: The numbers of amending ordinances are shown in brackets following or adjoining the subject matter affected.

Plate 1A **Area District Map**

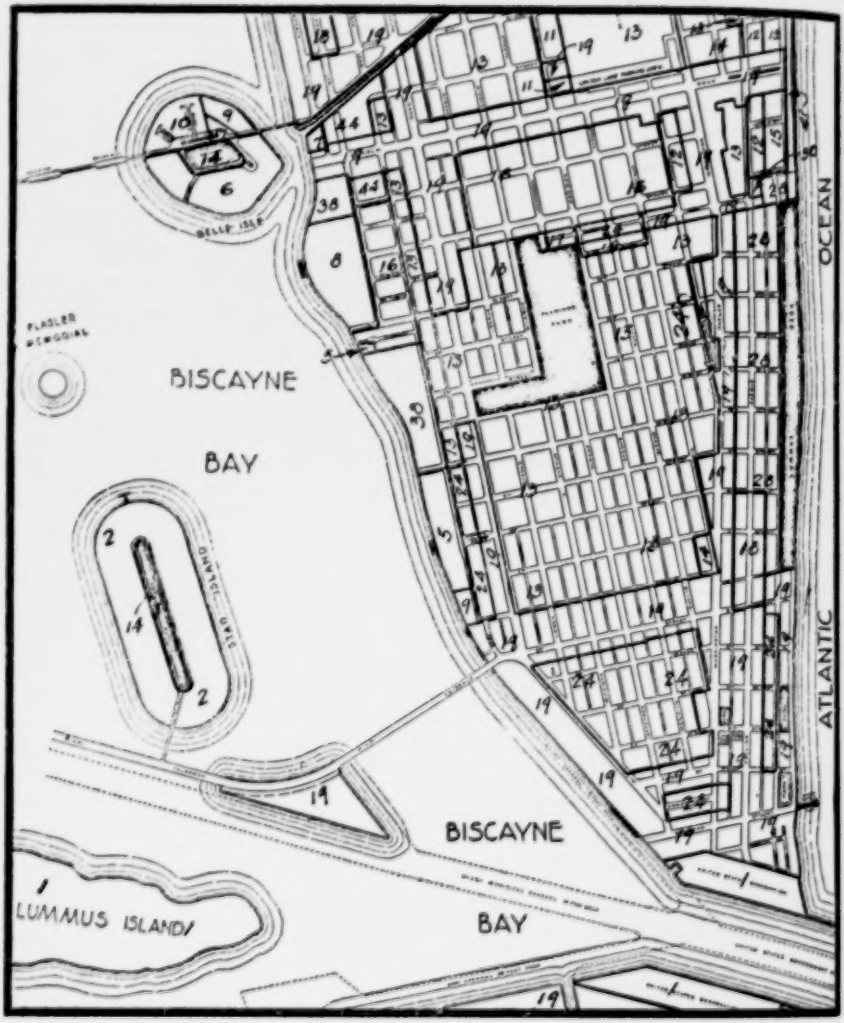

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Plate 1B **Use District Map**

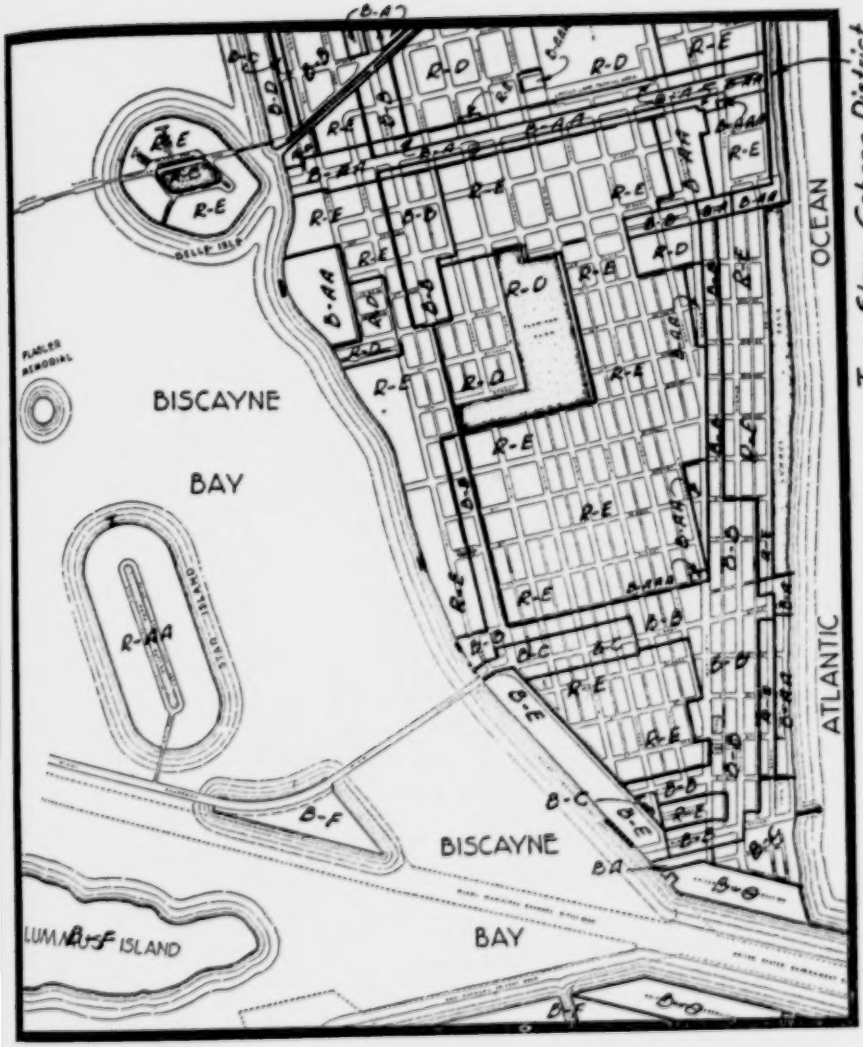

Plate 2A **Area District Map**

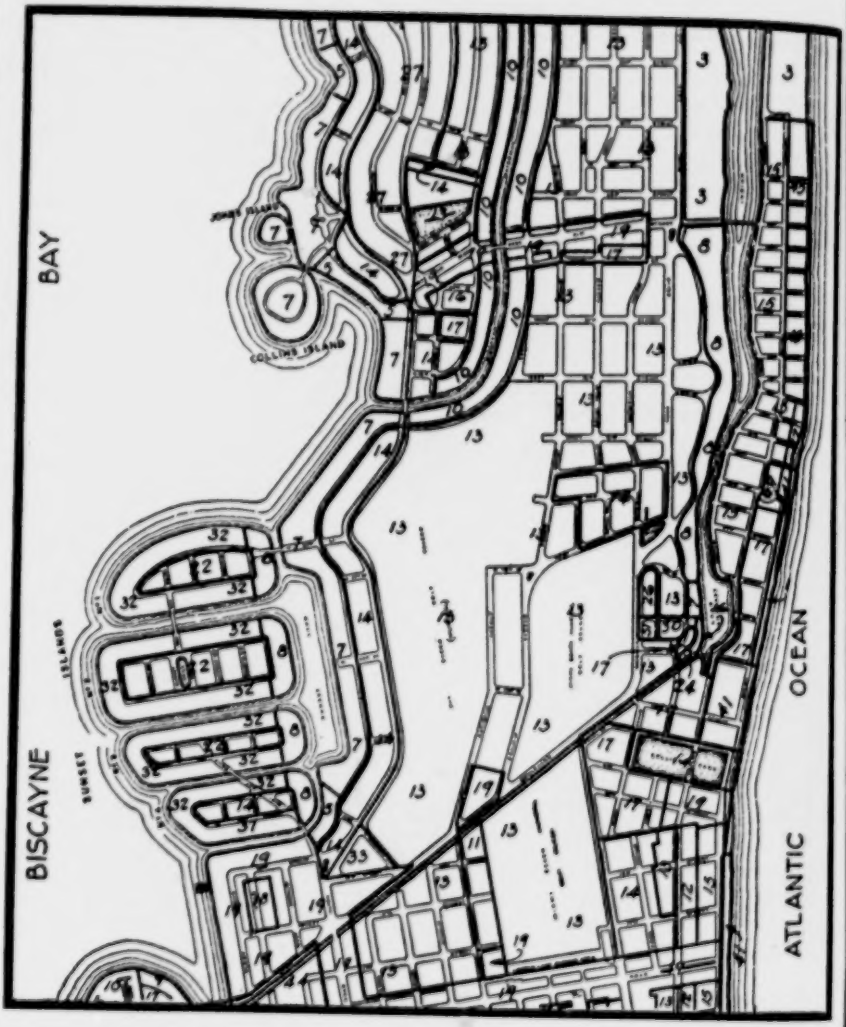

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Plate 21B

Area District Map

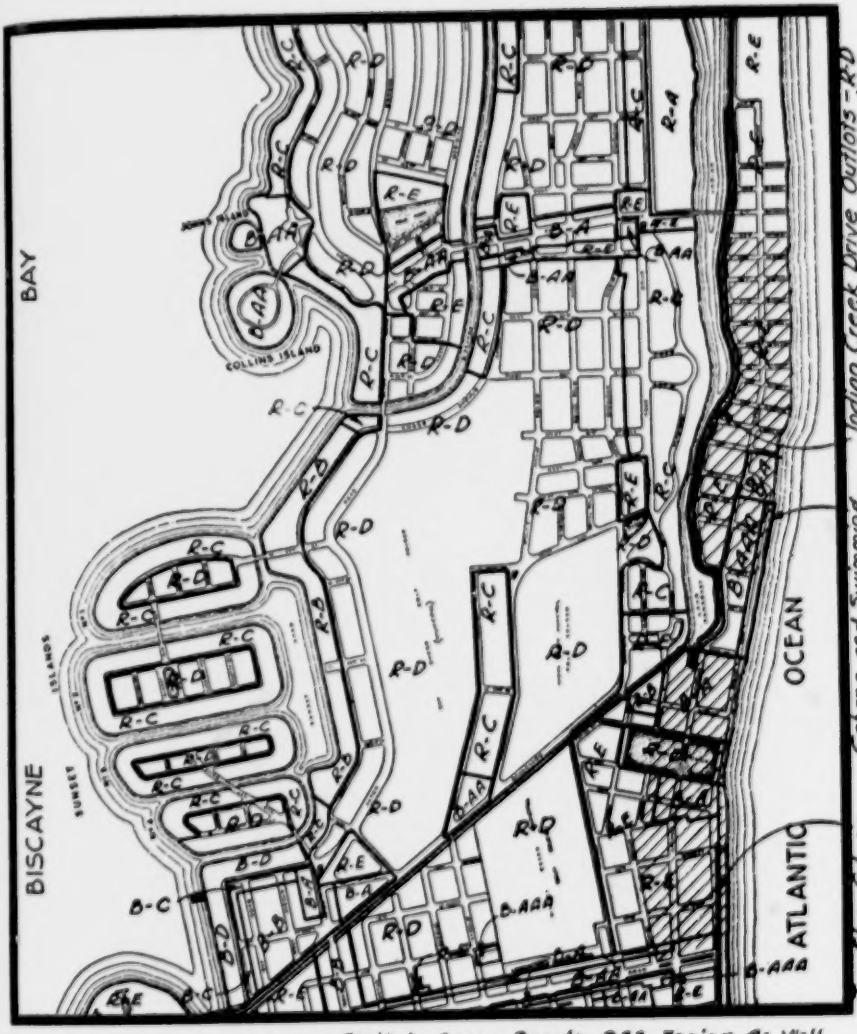

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Plate 3A

Area District Map

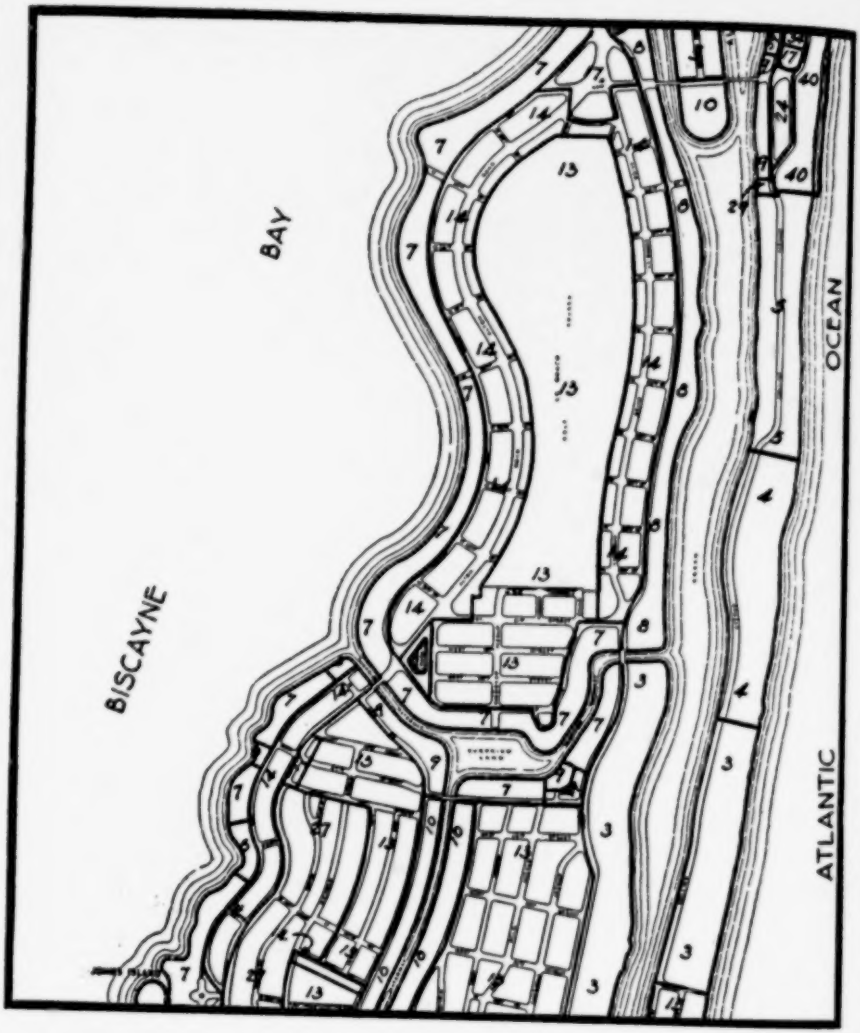

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Plate 3B **Use District Map**

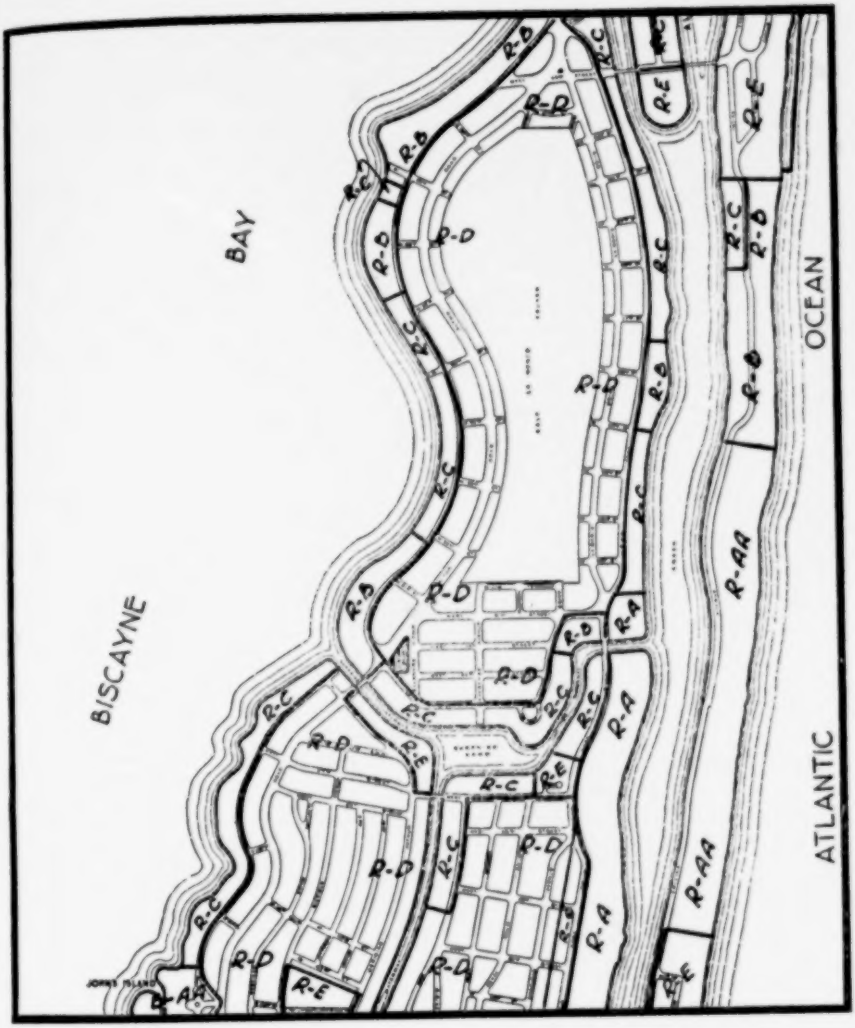

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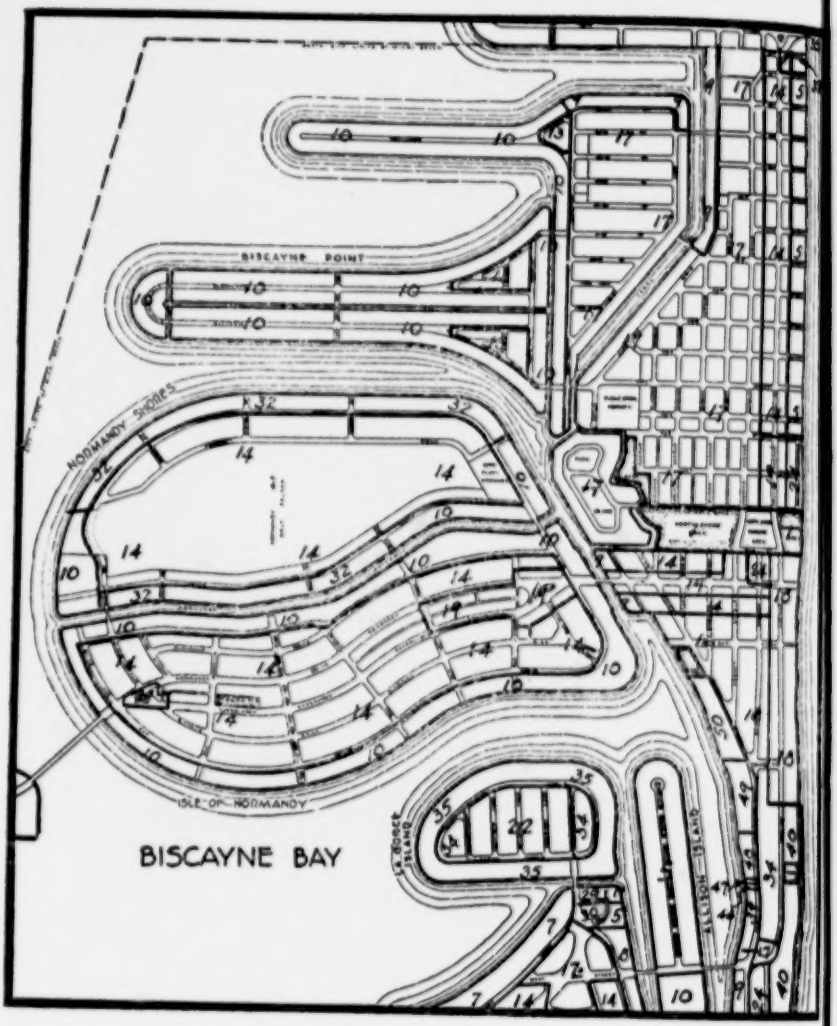
Plate 4A

Area District Map



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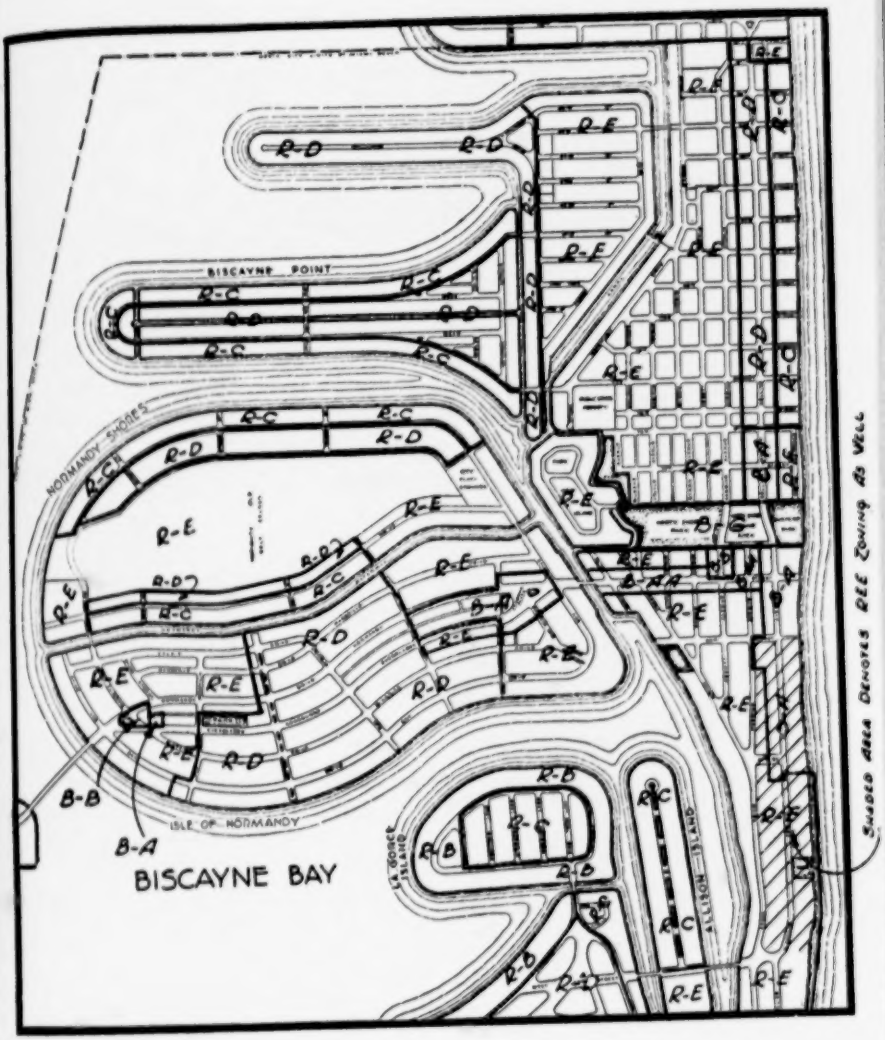


Plate 5A

Area District Map

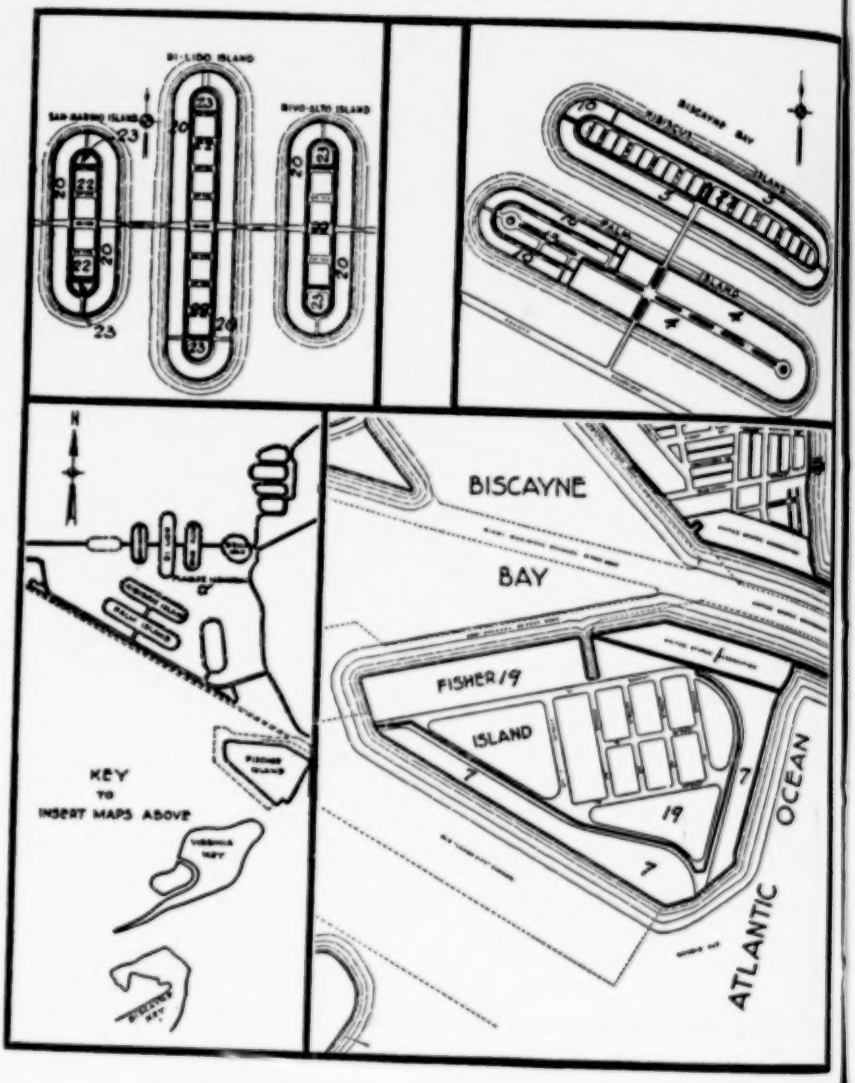
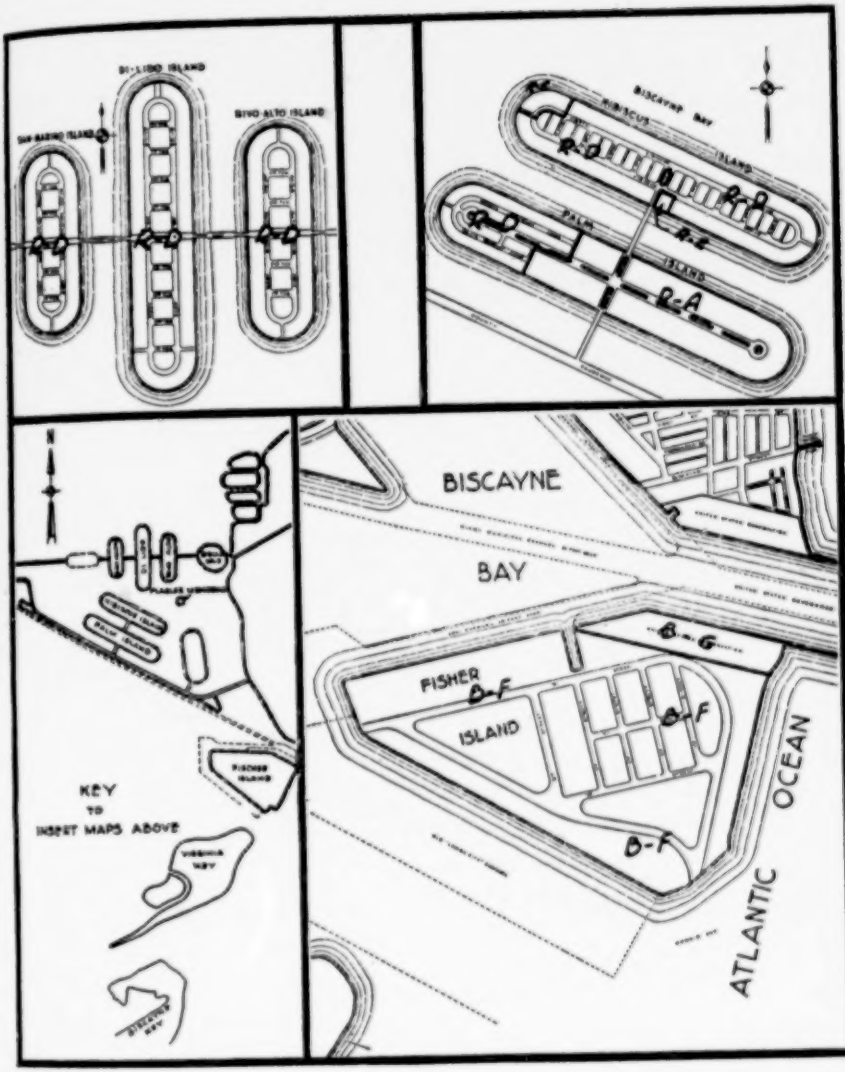


Plate 5B

Use District Map



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NOV 27 1954
HAROLD B. WILLEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 408.

RALPH LACHMAN *et al.*, IRVING KIPNIS *et al.*, TED-LAND REALTY CORP., HARRY KLUBECH *et al.*, RAL-JEAN, INC., MIRRIS FOX *et al.*, NAT TELLER *et al.*, ISADORE EVANS *et al.*, K. CHAACHOU, JESSIE S. REID, a Widow, *Appellants*,

vs.

THE CITY OF MIAMI BEACH, A MUNICIPALITY CREATED AND EXISTING UNDER THE LAWS OF THE STATE OF FLORIDA, *Appellee*.

APPEAL FROM THE SUPREME COURT OF FLORIDA.

MOTION TO DISMISS, OR IN THE ALTERNATIVE, AFFIRM.

BEN SHEPARD,
1130 Washington Avenue
Miami Beach, Florida,

THOMAS H. ANDERSON,
First National Bank Building,
Miami, Florida,

Attorneys for the City of Miami Beach.

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Supreme Court of the United States

No. 408.

RALPH LACHMAN, IRVING KIPNIS, TEDLAND REALTY CORP., HARRY KLUBECH, RALJEAN, INC., MIRRIS FOX, NAT TELLER, ISADORE EVANS, K. CHAACHOU, and JESSIE S. REID, a Widow *et als., Appellants,*

vs.

THE CITY OF MIAMI BEACH, a Municipality Created and Existing under the Laws of the State of Florida, *Appellee.*

APPEAL FROM THE SUPREME COURT OF FLORIDA.

MOTION TO DISMISS, OR IN THE ALTERNATIVE, AFFIRM.

The City of Miami Beach respectfully moves the Court to dismiss the appeal or affirm the decrees appealed from because there is a clear lack of a Federal question presented.

In support of the motion, the appellee respectfully shows that:

1.

The appellants brought suits in the Circuit Court of Dade County, Florida, in which they sought to change the use classification imposed on their property by a zoning ordinance of the City of Miami Beach. The change sought to be effected was from single-family to multiple-family use. The classification was challenged, not on the ground that the ordinance was inherently unconstitutional, but because changes in the development of the Beach had made the classification presently unreasonable. A copy of the complaint in the Lachman* suit is appended hereto as Exhibit A. On final hearing, the Court held that the ordinance was arbitrary, unreasonable and invalid, "because said property is no longer adapted for the use for which it is zoned by reason of physical changes in the surrounding area and phenomenal growth of the City of Miami Beach" (52).**

2.

The Court held that the evidence which the appellants offered "fully and clearly established and maintained the allegations contained in the bill of complaint as amended * * *" (56).

3.

The lots in question lie interspersed throughout a long strip of ocean beach which extends for perhaps 1½ miles along the city's main arterial highway (Collins Avenue). Not being contiguous to each other, the rezon-

*All complaints were substantially the same.

**References are to appellants' Statement as to Jurisdiction.

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ing of one lot from a residential to a multiple-family use would have constituted what is generally known as spot zoning.

4.

The Circuit Court of Dade County found that the Collins Avenue roadway in front of the properties involved in the case would not be sufficient to take care of the increased traffic if hotels and apartment houses were built on all of the properties, and suggested that the plaintiffs should convey to the City without cost a portion of their land so as to provide for this width. Of course, this suggestion was wholly without any judicial effect. The basis, however, of the Court's holding and of the statement in the subsequent opinion of the Supreme Court of Florida that a change in the classification would necessarily affect the general zoning plan of the City, is reflected in the testimony of one of the witnesses for the City (Maurice Lipp, the Assistant City Manager and City Engineer.) Mr. Lipp testified that to provide for traffic in the event of a zoning change, Collins Avenue would have to be widened to 100 feet, the present roadway reconstructed entirely, street lights would have to be moved, and a new outlet for westbound traffic would have to be provided across Indian Creek. He said the estimated cost of the work was $1,950,000.00. He also said that in addition to the work above noted, the present sanitary sewer line would have to have larger mains, that a new pumping station and a force main would have to be built, and that 20-inch water mains would have to be installed, the cost of doing which (including sewer and pumping stations)

would be $300,000.00. The total of these estimates is $2,250,000.00. This would constitute a capital outlay of the City of Miami Beach, for which special assessments could not be levied and which would represent a direct contribution by the City at large to improvements in the affected area.

5.

One expert for the City testified that the *locus in quo* was one of the few tracts of land left in Dade County bordering the ocean which was not encroached upon by commercial or multi-family uses and which was in the vicinity of shopping centers. He said that as the Miami area grew and expanded, which it was doing at a rapid pace, one could expect that high-class residential areas would maintain usability for private residential purposes.

6.

Hugh Pomeroy, a nationally known planning and zoning expert*, testified that in his opinion the retention of the ocean front strip for the general purpose for which it was originally intended (single-family) was not only appropriate, but desirable, and, even more so, rather neces-

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*Director of Planning at Los Angeles County, 1923; organized California Planners Institute; directed revisionary study of Los Angeles County; Field Representative of American Society of Planning Officials; Director of Virginia State Planning Board; Executive Director of National Association of Housing Officials; Director of Westchester County, New York, Department of Planning; instructor in planning at Columbia University; past President of the American Institute of Plans and Technical Society, succeeding Edward M. Bassett, father of zoning law.

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sary to provide a satisfactory range of available living environments and a comprehensive land use for the City.

7.

The Supreme Court of Florida reversed the decision of the lower court, holding that it had usurped the legislative power of the City's zoning board and Council (42) 71 So. 2d 148.

8.

The majority opinion held that there was ample evidence to support the theory of the City (38) that the amount of property involved in the case was so great that to change its classification would necessarily affect the entire general zoning plan of the City (39).

9.

The special concurring opinion of the Chief Justice held that the appellants, in order to have invoked the administrative remedy provided by the City Charter, should have applied for a change in the use classification, the effect of which would have been to compel the Council to hold a public hearing on the question of whether the entire area should be reclassified. That if the request to rezone had been refused, then "it may be that in a judicial review of the decisions of the local zoning authority as authorized by Section 196.16 *et seq.* Florida Statutes, the Court would be authorized to decide the question of whether the zoning authority's refusal to rezone in the requested manner was an unreasonable exercise of the zoning power " (45) (Special opinion of Roberts, C. J.).

10.

The cause before the Circuit Court of Dade County and the Supreme Court of Florida was one of fact, namely, had there been such "physical changes in the surrounding area" and had the "phenomenal growth of the City of Miami Beach" been such as to cause the City zoning ordinance to be arbitrary and unreasonable as applied to the appellants' property?

11.

The appellants contend that the decision of the Supreme Court of Florida operated to deny them due process and equal protection.

12.

The appellants were not denied due process. Ample administrative remedies under the Charter of the City of Miami Beach are available to persons deemed to be aggrieved by the applicability of the zoning ordinance to particular property (R. 45). The appellants' case was tried in the Circuit Court of Dade County according to the procedure governing the trial of Chancery cases. A party is not deprived of his property without due process when he has had by the laws of the state a fair trial in a court of justice according to the applicable modes of proceeding.

Davidson v. *City of New Orleans*, 96 U. S. 97.
Simon v. *Craft*, 182 U. S. 427.
Williams v. *Parker*, 188 U. S. 491.

An erroneous decision in the state court does not constitute a denial of due process,

American Railway Express v. *Commonwealth*, 273 U. S. 269,

and the Constitutional guaranty does not demand that a litigant be afforded a second opportunity to litigate the existence of jurisdictional facts.

Sherrer v. *Sherrer*, 334 U. S. 343.

13.

The appellants were not denied equal protection. Appellants say that in the instant case they have proved that the classification complained of (single-family) effects, as to them, discrimination and oppression of inequality while granting undue favor and class privilege to other owners not so restricted. No such case as this is made out by the complaint. There is no charge in the complaint that the ordinance itself is discriminatory, but only that it operates oppressively against the plaintiffs by reason of a changed factual situation. The allegations of the complaint as stated in the order of the Circuit Court of Dade County presupposes the constitutionality of the ordinance in question; and indeed, the ordinance itself is not open to any such assault.

The appellants say in their brief (25) "that the owners of the 86 lots covered by the 40,000 square foot restriction, which includes the appellants, are the only persons and the only owners of property in the City of Miami Beach subject to this invidious discrimination." This statement is not entirely accurate with respect to the number of lots or the square foot restriction, but regardless of that, the fact that such a restriction was imposed upon the property in question would not amount to a denial of equal protection, and

no such attack upon the ordinance was made in the complaint.

The City of Miami Beach had an undoubted statutory and constitutional right to divide the City into zones and to prescribe the use classification to which property in each zone might be put. *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365.

The equal protection clause is simply a guaranty that all persons in the same class shall be affected in the same way. It prevents a discriminatory and unlawful classification. The complaint was not predicated upon an unlawful classification, and the cases relied upon by the appellants do not sustain the proposition contended for. The state has a broad discretion in the matter of classification, *Smith* v. *Cahoon*, 283 U. S. 533. If any state of facts can be conceived that would sustain the classification, there is a presumption of the existence of that state of facts, and the person assailing the classification has the burden of showing that the legislative action is arbitrary. *Borden's Farm Products Co.* v. *Baldwin*, 293 U. S. 194.

14.

The complaint did not raise the alleged Federal question asserted to exist, but only challenged the applicability of the ordinance by reason of an asserted change of conditions. Federal constitutional questions cannot be raised for the first time on appeal.

United States v. *New York Telephone Co.*, 326 U. S. 638.

Shelley v. *Craemer*, 334 U. S. 1.

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And especially is this the case when the Federal question was attempted to be raised by a petition for rehearing.

Bowe v. *Scott*, 233 U. S. 658.
Miller v. *Cornwall R. Co.*, 168 U. S. 131.
Harding v. *Illinois*, 196 U. S. 78.
Consolidated Turnpike Co. v. *Norfolk & Ocean View Ry. Co.*, 228 U. S. 326.

15.

The decision of the Supreme Court of Florida simply held that the question as to the applicability of the city zoning regulation to the appellants' property was one which was fairly debatable, and that being so, the judgment of the City Council was not subject to being overturned by the Courts. In so holding, the Court followed the decisions of this Court in *Holden* v. *Hardy*, 169 U. S. 366; *Radice* v. *New York*, 264 U. S. 292 and *Euclid* v. *Ambler Realty Co., supra.*

In the last cited case, the Court said that it was competent for the City, pursuant to a grant of power from the Legislature, to exclude apartment houses from an area set aside for private homes. This is the exact point which is involved in the case at bar. The City has determined that the property in question is best suited for single-family residences, and in so doing, has completely come within the rule of the Euclid case. In sustaining the zoning regulations in that case, this Court said that if the reasons which existed for the exclusion of multiple-family houses from single-family areas did not demonstrate the wisdom of the policy, at least, "the reasons are sufficiently cogent to preclude us from saying, as it must be said before the ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare."

16.

The decision of the Supreme Court of Florida was in line with its prior decision in *City of Miami Beach* v. *Hogan*, 63 So. 2d 495 (cert. denied *sub nominee H. Gertrude Hogan* v. *City of Miami Beach*, October Term, 1953, No. 132, 74 S. Ct. 33). This case involved a lot in the very area surrounding the *locii* in the cases at bar. The factual situations confronting the Court in the situation presented by the petition in that case and the appeal in this were practically identical. In the cited case, the Florida Supreme Court said:

> "If the Court adopts the policy of substituting their judgments for that of city officials, simply because of their refusal to rezone the property in accordance with the wishes of the landowner to increase the value of the land, they will eventually become the zoning boards for every county and municipality in the state."

For the reasons stated, this appeal should be dismissed or in the alternative, affirmed.

Respectfully submitted,

.....,

BEN SHEPARD,
1130 Washington Avenue,
Miami Beach, Florida,

.....,

THOMAS H. ANDERSON,
First National Bank Building,
Miami, Florida,

Attorneys for the City of Miami Beach.

IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA, IN CHANCERY

No. 151847

RALPH LACHMAN and JEAN LACHMAN, Plaintiffs,

vs.

THE CITY OF MIAMI BEACH, a municipality created and existing under the laws of the State of Florida, Defendant.

Bill of Complaint.

COME NOW, the Plaintiffs, RALPH LACHMAN and JEAN LACHMAN, by their undersigned attorneys, and file this, their Bill of Complaint against the Defendant, THE CITY OF MIAMI BEACH, a municipality created and existing under the laws of the State of Florida, and allege:

I.

The Plaintiff, RALPH LACHMAN, is a resident of Dade County, Florida, and is over the age of twenty-one years; the Plaintiff, JEAN LACHMAN, is a resident of Dade County, Florida, and is over the age of twenty-one years.

The Defendant, THE CITY OF MIAMI BEACH, is a municipal corporation, organized and existing under the laws of the State of Florida.

II.

The Plaintiffs, as tenants by the entirety, are the owners in fee simple of the following-described property, situate, lying and being in Dade County, Florida, to-wit:

> Lots 13 and 14 of INDIAN BEACH CORPORATION'S AMENDED PLAT, according to the Plat thereof, recorded in Plat Book 8, at page 61, of the Public Records of Dade County, Florida; and
>
> Lot 19, FIRST OCEANFRONT SUBDIVISION, according to the Plat thereof, recorded in Plat Book 9, page 78, of the Public Records of Dade County, Florida.

Since December 3rd, 1930, under the provisions of Zoning Ordinance No. 289, the aforedescribed property has been restricted in its use to single family dwelling purposes or estate purposes, being zoned RAA.

III.

That prior to the institution of this suit, and on the 8th day of May, 1952, the Plaintiffs, as owners of the above described property, filed a formal application for rezoning of said lots or parcels of land with the City Zoning Board of the City of Miami Beach, from RAA (Single family) to RE, to allow for multiple family, apartment and hotel use of said property; that said application for change in zoning was denied by said City Zoning Board on the 10th day of July, 1952; that Plaintiffs then filed a formal appeal from the decision of said Zoning Board before the City Council of the City of Miami Beach, but the City Council of the City of Miami Beach on the 16th day of July, 1952, affirmed and upheld the decision of the

Zoning Board, denying Plaintiffs' application for change in zoning. Therefore, Plaintiffs exhausted all administrative remedies available to them before filing this action.

IV.

Plaintiffs show that the land in question is situated in the area immediately north of 44th Street at Miami Beach, Florida, bounded on the west by Collins Avenue and on the east by the Atlantic Ocean. The south boundary of the land involved is in close proximity and similar in nature to the 7-acre tract of land known as Lot A, otherwise properly described as the Firestone Estate. Plaintiffs would show unto the Court that the said Lot A, consisting of some 700 feet north to south and lying between the Atlantic Ocean on the East and Collins Avenue and Indian Creek to the west, is part of a narrow strip of land contiguous with the property of your Plaintiffs and is not separated in any way by any natural boundary, street, parkway or any type of waterway, greenswards or parks; that the land is of identical nature in its east to west boundaries and is of the same type of soil, the same height and is suitable for and in demand only for the same uses and purposes of Lot A; that under the Zoning Ordinance of December 3rd, 1930, Ordinance No. 289, both Lot A and the property of your Plaintiffs were zoned under the RAA classification, which limited or restricted its use for single family estate purposes.

V.

Plaintiffs would further show unto the Court that since 1930 great changes have taken place in the City of

Miami Beach, and particularly within the area in question; that this land is no longer suitable for or in demand for single family purposes; that not only has the demand for this property ceased for single family uses, but that the immediate area surrounding the property, which comes under the same category, has now been changed so as to permit the construction of hotels and apartments on the said Lot A. Plaintiffs would further show that due to tremendous increases in population of the City of Miami Beach and the tremendous development of the hotel and apartment house area, both to the north and south of the property in question, and due to the pressure of the demand for multiple family uses right up to Lot A, the said Lot A, was re-zoned by the Council of the City of Miami Beach, pursuant to the mandate of the Supreme Court of Florida, as shown by a reported decision in said cause affecting said Lot A reported in 45 So. 2d 681, in which it is said:

> "The lands in question lie between the Atlantic Ocean and what is known locally as Collins Avenue, the main thoroughfare through the city, they are 8.13 acres in area and, as heretofore pointed out, are bounded on the South by an area zoned for hotels and apartment houses which have in fact been constructed up to and adjoining the Firestone lands. The ordinance in question was adopted in December, 1930, the population of the City is now six times what it was then; and many other changes have taken place. Before the institution of this suit, the city made a finding that the general welfare did not require the lands to be used exclusively for single family residences, but on the other hand, they should be acquired

by the city and developed for ocean park purposes. Both the Master and the Chancellor found that the zoning restrictions had reduced the value of the lands of complainants by three-fourths, that as zoned for the uses indicated by the ordinance, they were worth $400,000 but if permitted to be used for apartment houses and hotels, as were the lands adjoining them, they had a value of $1,750.00. The evidence shows conclusively that the lands are more valuable for hotel and apartment houses than any other purpose.

"Zoning restrictions, like other phases of the law, are subject to change or removal when the reason for them ceases. When they run afoul of the public welfare appears to be a good test to direct their removal. The public welfare is a concept that broadens with changing times and circumstances and it now embraces many species of regulations that the courts of yesterday would not have brought within its range. There must be a positive showing of physical, economic or social change rather than esthetic or group caprice to justify the release of zoning regulations. They will not be released at the behest of community or group pressure, if in doing so, constitutional guaranties are undermined. The ordinance in question had been in effect fourteen years, during which time numerous physical, economic and social changes in the locus had taken place. Not a single property owner in the City is shown to be hurt by removing the zoning restrictions as to the lands of the appellee, yet if they are not removed they will cost appellee more than one million dollars. There is no showing that the zoning plan of the City will be jeopardized or materially affected by removal. Under such circumstances they amount to confiscation."

VI.

Plaintiffs further show at the time of the adoption of the said zoning ordinance aforesaid, the City of Miami Beach consisted of approximately 7,000 residents and that the pattern of its future growth could not be fixed and ascertained. The population is now in excess of 60,000 inhabitants and the pattern of its progress and growth has been such with the change in zoning by the City of Miami Beach on Lot A (the Firestone Estate) that the property described herein is presently unsuitable and not in demand for estate purposes, but is in great demand as a location for the site of apartment houses and/or hotels.

VII.

(a) Your Plaintiffs would further show unto the Court that since the re-zoning of said Firestone Estate, the City of Miami Beach has caused condemnation proceedings to be instituted in a certain suit, syled *City of Miami Beach* v. *Hogan, etc.*, Common Law No. 26707, in the Circuit Court of Dade County, Florida, for the purpose of condemning the following described property, to-wit:

> Lots 6, 7, 8 and 9 of INDIAN BEACH CORPORATION AMENDED, according to the Plat thereof, recorded in Plat Book 8, page 61, of the Public Records of Dade County, Florida,

for public use as beaches and parks.

(b) Your Plaintiffs would further show unto the Court that since the re-zoning of said Firestone Estate, the City of Miami Beach has caused condemnation proceed-

ings to be instituted in a certain suit, styled *City of Miami Beach* v. *Bell, etc.*, Common Law No. 27083, in the Circuit Court of Dade County, Florida, for the purpose of condemning the following described property, to-wit:

> Lots 8, 10, 11, 12, of SECOND OCEAN FRONT SUB., according to the Plat thereof, recorded in Plat Book 28, page 28, of the Public Records of Dade County, Florida,

for public use as beaches and parks.

(c) Your plaintiffs would further show that the property described in sub-paragraph (a) hereof is located between the said Firestone Estate and the property involved in this cause and that the property described in sub-paragraph (b) hereof is located north of and in close proximity to said property in question.

Your Plaintiffs verily believe, and, therefore, allege, that the existence of public beaches and parks in close proximity to the north and to the south of the property involved in this suit and hereinbefore more particularly described in Paragraph II hereof completely destroys its value as private estates and greatly enhances the value of such property for multiple dwelling purposes.

VIII.

Plaintiffs would further show unto the Court that the land, in its present restricted zoning classification, is worth less than $1,000 per front foot and that there is no market for said land or demand for such purposes, even at that price; that if the property is re-zoned so as to permit use for multiple family purposes the land will

have a value of $4,000 per front foot and that the land will be readily usable and saleable for such purposes at such price. Plaintiffs further show unto the Court that *bona fide* negotiations are presently pending for the sale of the Firestone Estate, Lot A, at $2,300.00, or approximately $4,000 per front foot, brought about solely by the change in the zoning from RAA estate classification.

IX.

Plaintiffs would further show unto the Court that the land in question, identical in nature to the Firestone Estate, which is zoned for hotels and apartment house construction, has even less utility value for RAA estate districts than existed before the Supreme Court of Florida ordered the change of said zoning, by reason of the proposed plans for public beaches and parks in the immediate area through condemnation proceedings hereinbefore referred to in Paragraph VII hereof, as well as other properties in the same strip of land, contiguous to said Firestone Estate and the property herein involved, which proceedings the citizens of Miami Beach voted over-whelmingly in favor of an election to approve the issuance of general obligation bonds for that purpose. And Plaintiffs further show that the Firestone Estate has brought about not only the demand for the change, but the actual demand and necessity for a change of the zoning on Plaintiffs' property to correspond with that of its contiguous property, to-wit: the Firestone Estate.

X.

Plaintiffs further show unto the Court that the provision of Ordinance No. 289 of the City of Miami Beach

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requiring that the Plaintiffs' property be used only for single family purposes is not now predicated on and now has no relation to public safety, public health, public welfare or public morals and the maintenance of the same in its present zoning is not of any aid or benefit to any general plan of the development of the City of Miami Beach.

XI.

Plaintiffs further charge that not a single property owner of the City of Miami Beach will be hurt by removing the zoning restrictions as to the lands of the Plaintiffs and yet, if the zoning restrictions are not removed, the Plaintiffs will suffer a damage in excess of $1,500,000 and that under such circumstances, the continuance of such a zoning regulation amounts to confiscation.

XII.

Plaintiffs further show unto the Court that the maintenance of the present zoning, as applied to the particular property in question, is therefore, arbitrary, unreasonable, and unconstitutional, and should be decreed by this Court of equity to be null, void and unenforceable as against the Plaintiffs' property.

WHEREFORE, your Plaintiffs, being without remedy in the premises, save and except in a Court of Equity, pray:

(a) That this Court grant the Plaintiffs a speedy hearing in the cause;

(b) That this Court, by its decree, rezone the property of the Plaintiffs from RAA Estate District (single family) to RE Multiple Dwelling.

(c) That this Court, by its decree, establish and declare that that portion of Zoning Ordinance No. 289 of the City of Miami Beach, passed on December 3rd, 1930, restricting the use of Plaintiffs' property to RAA Estate District (single family) is unreasonable, arbitrary, confiscatory and unconstitutional.

(d) That this Court permanently enjoin and restrain the municipality of the City of Miami Beach from enforcing the said zoning ordinance against the Plaintiffs' property described in the Complaint.

(e) That this Court grant such other and further relief as to it may be deemed equitable and proper.

Pallot, Silver & Mulloy
Attorneys for Plaintiffs
804 Ingraham Building
Miami, Florida

By /s/ William L. Pallot
William L. Pallot, of Counsel.

STATE OF FLORIDA)
)SS.
COUNTY OF DADE)

Before me, the undersigned authority, personally appeared WILLIAM L. PALLOT, who having been by me first duly sworn, on oath deposes and says: That he is a member of the firm of Pallot, Silver & Mulloy, attorneys for the Plaintiffs herein; that he has read the foregoing Bill of Complaint and knows the contents thereof and that the matters and things alleged therein are, to the best of his knowledge, true and correct.

/s/ William L. Pallot

Sworn to and subscribed before me this 29th day of July, A. D. 1952.

/s/ Sam I. Silver
Notary Public, State of
Florida at Large.

My Commission expires:

No. 408. LACHMAN ET AL. *v.* CITY OF MIAMI BEACH. Appeal from the Supreme Court of Florida. *Per Curiam:* The motion to dismiss is granted and the appeal is dis-

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missed for the want of a substantial federal question. *John M. Murrell* and *Raymond L. Wise* for appellants. *Thomas H. Anderson* for appellee. Reported below: 71 So. 2d 148.